

These informal comments are from Energy Solutions USA Inc (ESUI) in response to some of the items listed in the Energy Broker & Representative Strawman Proposal Final (Proposal).

I would like to express appreciation to Honor Kennedy and those working on bringing forth issues important to the integrity of a competitive landscape in the deregulation of electricity and natural gas in the state of New York.

As background, Energy Solutions USA, Inc. (ESUI) is a NY corporation that has been operating for slightly over 10 years. On the procurement side for both electricity and natural gas, ESUI works with clients and many ESCO's in finding contracts and pricing that works best for the clients. In effect ESUI performs the bid process for clients. ESUI monitors the contract during its term based on the client's needs and at the time of renewal assists them in renewing their contract based on what the market is doing and what is best. ESUI's market focus is the business sector and procurement is a main piece of our offering along with other energy management services.

Following are ESUI comments for certain statements made in the Proposal.

1) Establish licensing or registration requirement:

Comment::Having a centralized place where consumers both residential and commercial can access a list of those providers or brokers providing service in New York would encourage those entities to search who would be best for them. However for brokers that are already operating in the state of New York and are in good standing I would recommend a grandfathering of those businesses from either a licensing and/or registration requirement. ESUI does support, should it be decided that licensing or registration requirements are put into place, that one agency that has experience in the energy markets should be responsible for the monitoring and managing of the licensing or registration.

2) Should the requirements be the same as for ESCOs as is in several states?

Comment: States with respect to what they require or not in regards to licensing or registration for companies that broker electricity and natural gas varies quite a bit. Unlike ESCO's, brokers do not take title to the supply and as such the requirements should not be guided by ESCO requirements. In a competitive landscape setting up hurdles to market entrance limits competition and the opportunity of a new entrant or an existing one to provide best price is impeded. However some level of notification or application should be required to help qualify the pool of brokers.

- 3) Set ESCO compliance parameters for using an unlicensed or unregistered broker or representative.

Comment: When a broker is enlisted with an ESCO contracts are entered into that speaks to ethics, quality, representation, conduct and other items that both the ESCO and the broker are in agreement in. It speaks to how business is to be conducted between the two entities and the representations to be made or not made to clients or prospective clients. The due diligence and vetting of a broker by an ESCO is done through this process.

As clarification to the comment already made by another party and in reality as a secondary measure of proper representation, the contract for supply is with the client and the ESCO. This contract has a full list of terms and conditions following the proper representation as directed by the UBP. It is ensured that as long as the ESCO has fully disclosed to the client in writing what the client should expect going forward and the ESCO honors it, then the customer will have the service as it understands it should be. The experience of the customer in large part is based on whether the billing of service is in line with what was contracted for which is outside of the brokers control.

- 4) Require mandatory participation in routine training sessions in each utility service territory where the broker intends to conduct business.

Comment: As a broker in order to work with an ESCO in a manner that is best for the client, the broker is aware of not only the utility issues but also the what the ESCO's provide in that market for price plans, terms etc. In a competitive landscape those entities that do not know what they are doing will be weeded out and those that serve the clients the best will expand their presence. Realizing that in order to promote competition and knowledge within the market, the utilities can provide training material on their service territory and as new items come up, they can be required to send out notification to recipients which can includes ESCO's and brokers.

Full Disclosure of Payment Terms

- 1) 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).

Comment: This will do the greatest to limit the ability of getting customers the best price and therefore limit competition, which is the opposite of what deregulation was intended to do. It will also limit the sales approach of an ESCO. Some use strictly a direct sales force. Others a combination of direct sales and indirect sales (brokers) and other are 100% indirect sales. This disclosure would give a perception to a customer whether residential or commercial of the profit of both a broker and that of an ESCO which would not be accurate. A broker would be viewed as a cost that can be avoided by going

direct to an ESCO. In this case the customer would lose the benefit of having a broker perform the bid process for them. There is no disclosure on the ESCO's part of their margin in the sale. The broker provides a customer the opportunity have the prices bid out and the ESCO mark-up is not disclosed to the customer nor to the broker. The incentive will be for a broker to step back from providing a service to those in the state which will reduce competition and a viable sales channel to ESCO's.

- 2) Requirement to maintain updated information, after licensing or registration, sources of known or planned compensation

Comment: This would eliminate competition at the broker level and therefore remove them from being an entity that works for a client to an organization that processes. An unintended result could be that brokers would only sign on with larger ESCO's . This would limit the ability for smaller ESCO's to get into the market and could eliminate the broker as being a channel to sell for them.