PSC NO. 220 ELECTRICITY ADDENDUM TYPE: UBP-DERS
NIAGARA MOHAWK POWER CORPORATION ADDENDUM: 4
INITIAL EFFECTIVE DATE: APRIL 30, 2026
STAMPS: Issued in Compliance with Order in Cases 23-M-0106, 15-M-0180 and 98-M-1343, dated January 28, 2026.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

UNIFORM BUSINESS PRACTICES FOR DISTRIBUTED ENERGY RESOURCE SUPPLIERS
CASE 15-M-0180

EFFECTIVE DATE
APRIL 2026

TABLE OF CONTENTS

SECTION 1: DEFINITIONS 1
SECTION 2: GENERALLY APPLICABLE PROVISIONS FOR DER SUPPLIERS 7
SECTION 2A: SALES AGREEMENTS 7
(Generally Applicable) 7
SECTION 2B: GENERAL MARKETING STANDARDS 7
(Generally Applicable) 7
SECTION 2C: CUSTOMER DATA 8
(Generally Applicable) 8
SECTION 2D: RESPONSIBILITY FOR CONTRACTORS AND OTHER THIRDPARTY AGENTS 11
(Generally Applicable) 11
SECTION 2E: CUSTOMER INQUIRIES AND COMPLAINTS 12
(Generally Applicable) 12
SECTION 2F: CONSEQUENCES FOR VIOLATIONS 12
(Generally Applicable) 12
SECTION 2G: OVERSIGHT REQUIREMENTS 14
(Generally Applicable) 14
SECTION 3: PROVISIONS SPECIFIC TO CDG AND ON-SITE MASS MARKETDG PROVIDERS 15
SECTION 3A: REGISTRATION REQUIREMENTS 15
(CDG and On-Site Mass Market DG Providers) 15
SECTION 3B: ENHANCED MARKETING AND ADVERTISING STANDARDS 18
(CDG and On-Site Mass Market DG Providers) 18
SECTION 3C: MINIMUM STANDARDS FOR SALES AGREEMENTS 21
(CDG and On-Site Mass Market DG Providers) 21
SECTION 3D: STANDARD CUSTOMER DISCLOSURE STATEMENTS 23
(CDG and On-Site Mass Market DG Providers) 23
SECTION 3E: CUSTOMER INQUIRIES AND COMPLAINTS 24
(CDG and On-Site Mass Market DG Providers) 24
SECTION 3F: REPORTING REQUIREMENTS 25
(CDG and On-Site Mass Market DG Providers) 25
SECTION 4: ENERGY BROKERS AND ENERGY CONSULTANTS 26

SECTION 1: DEFINITIONS

As used in these Uniform Business Practices for Distributed Energy Resource Suppliers (UBP-DERS), the following terms shall have the following meanings:

CDG Provider – An entity that is acting or planning to act as a CDG Sponsor for one or more CDG projects, or that is otherwise engaged in soliciting customers, members, or subscribers for a CDG project or CDG projects, through its own employees or agents, on its own behalf. A CDG Sponsor is the entity that organizes, owns, and/or operates a CDG project.

CDG Marketing Representative - An entity that is either a CDG Provider or an agent conducting, on behalf of the CDG Provider, Energy Broker, Energy Consultant, or any marketing activity that is designed to resultin the enrollment of customers with the CDG Provider.

Commission – The New York State Public Service Commission (PSC).

Customer Inquiry – A question or request for information from a customer relating to a rate, term, or condition of service provided by a DER supplier, distribution utility, DSP, or other service provider.

Customer Service Representative (CSR) – An employee or agent of a CDG Provider responsible for responding to customer inquiries and complaints.

Department – The New York State Department of Public Service.

Distributed Energy Resources (DER) – A broad category of resources including end-use energy efficiency, demand response, distributed storage, and distributed generation.

Distributed Energy Resource (DER) Supplier – A supplier of one or more DERs that participates in a Commission-authorized and/or utility or DSP-operated program or market. Suppliers may choose to provide DERs as stand-alone products or services, or may choose to bundle them with energy commodity. CDG Providers and On-Site Mass Market DG Providers are included within the definition of DER suppliers. Entities which sell both DERs and energy commodity are both DER suppliers and ESCOs.

Distributed Energy Resource (DER) Supplier Marketing Representative – An entity that is either the DER supplier or an agent conducting, on behalf of the DER supplier, any marketing activity that is designed to enroll customers with the DER supplier. CDG Marketing Representatives and On-Site Mass Market DG Marketing Representatives are also a DER Supplier Marketing Representatives.

Distributed System Platform (DSP) – The DSP is an intelligent network platform that will provide safe, reliable and efficient electric services by integrating diverse resources to meet customers' and society's evolving needs. The DSP fosters broad market activity that monetizes system and social values, by enabling active customer and third party engagement that is aligned with the wholesale market and bulk power system.

Distribution Utility – A gas or electric corporation within the Commission's jurisdiction owning, operating or managing electric or gas facilities for the purpose of distributing gas or electricity to end-users.

Distribution Utility Customer Account Number – A number used by a distribution utility to identify the account of a utility customer.

Distribution Utility Tariff – A schedule of rates, terms and conditions of services provided by a distribution utility.

Electronic Data Interchange (EDI) – The computer-to-computer exchange of routine information in a standard format using established data processing protocols. EDI transactions are used in retail access programs to switch customers from one supplier to another or to exchange customers' history, usage or billing data between a distribution utility or Meter Data Service Provider and an ESCO. Transaction set standards, processing protocols, and test plans are authorized in orders issued by the Public Service Commission in Case 98-M-0667, In the Matter of Electronic Data Interchange, and available on the Department of Public Service website at: http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=98-m-0667&submit=Search+by+Case+Number.

Energy broker – A non-utility entity that performs energy management or procurement functions on behalf of customers, ESCOs or DER Suppliers, and (1) that assumes the contractual and legal responsibility for the sale of electric supply service, transmission or other services to end-use retail customers, but does not take title to any of the electricity sold, and does not make retail energy sales to customers or (2) that assumes the contractual and legal obligation to provide for the sale of natural gas supply service, transportation or other services to end-use retail customers, but does not take title to any of the natural gas sold, and but does not make retail energy sales to customers.

Energy consultant – any person, firm, association or corporation who acts as broker in soliciting, negotiating or advising any electric or natural gas contract, or acts as an agent in accepting any electric or natural gas contract on behalf of a DER Supplier.

Energy Services Company (ESCO) – An entity eligible to sell electricity and/or natural gas to end-use customers using the transmission or distribution system of a utility. ESCOs may perform other retail service functions.

Interval Data – Actual energy usage for a specific time interval for a specific period recorded by a meter or other measurement device.

Large Customer – A customer that is within a distribution electric utility's non-residential demand-based or mandatory hourly pricing (MHP) service classification. Where a DER supplier or DER supplier marketing representative does not have sufficient information to determine whether a customer is a mass market or a large customer, that customer should be treated as a mass market customer unless and until the DER supplier or DER supplier marketing representative acquires sufficient information and determines that the customer is a large customer.

Load Profile – Actual or estimated customer energy usage by interval over a period representing usage for a customer or average usage for a customer class.

Mass Market Customer – A customer that is within a distribution electric utility's residential or small commercial service class and is not billed based on peak demand. Where a DER supplier or DER supplier marketing

representative does not have sufficient information to determine whether a customer is a mass market or a large customer, that customer should be treated as a mass market customer unless and until the DER supplier or DER supplier marketing representative acquires sufficient information and determines that the customer is a large customer.

Marketing – The publication, dissemination or distribution of informational or advertising materials regarding a DER supplier's services and products to the public by print, broadcast, electronic media, direct mail or by telecommunication.

Meter – A device that measures the units of electric or natural gas service supplied to consumers.

New York State Independent System Operator (NYISO) – An independent management organization, authorized by the

Federal Energy Regulatory Commission, operating the bulk electric transmission system and wholesale electric market.

Office of Consumer Services (OCS) – Office within the Department of Public Service that receives consumer complaints and makes determinations concerning customer complaints. OCS identifies the exiting Office or its successor in the event that the Office name is changed.

On-Site Mass Market DG Provider – An entity that is engaged in soliciting mass market customers for a project or service that involves the installation of distributed generation equipment, such as solar panels, on the property of those mass market customers, through its own employees or contractors, on its own behalf rather than as a contractor.

On-Site Mass Market DG Marketing Representative - An entity that is either an On-Site Mass Market DG Provider or an agent conducting, on behalf of the Provider, any marketing activity that is designed to result in the enrollment of customers with the Provider.

Plain Language – Clear and coherent language using words with common and everyday meanings and avoiding legal or energy industry terms, acronyms and abbreviations that a person of ordinary circumstances should not be expected to understand. If the use of a technical term is necessary, the term must be clearly defined in the portion of the text where it is used.

Residential Customer – A person receiving commodity supply at a premises used as a residence as defined in 16 NYCRR Part 11.2(a)(2).

Sales Agreement – An agreement between a customer and a DER supplier that contains the terms and conditions governing the provision of products and services by a DER supplier. The agreement may be a written contract signed by the customer or a statement supporting a customer's verifiable verbal or electronic authorization to enter into an agreement with the DER supplier for the products and services specified.

Termination Fee – A fee specified in a DER supplier sales agreement that may be charged to a customer for terminating the sales agreement before the end of the term described in

that agreement, regardless of whether the assessed amount is identified as a fee, a charge, liquidated damages or a methodology for the calculation of damages, and regardless of whether it is fixed, scaled or subject to calculation based on market factors.

Utility Dynamic Load Management Program – A program designed to reduce load in periods or places of high demand, including but not limited to peak shaving programs, local distribution reliability programs to address local reliability needs, and direct load control programs. These programs are further described in Case 14-E-0423 et al., Order Adopting Dynamic Load Management Filings with Modifications, issued June 18, 2015.

SECTION 2: GENERALLY APPLICABLE PROVISIONS FOR DER SUPPLIERS

Applicability. The provisions of these sections apply to all DER suppliers that participate in a Commission-authorized and/or utility or DSP-operated program or market with respect to transactions between the DER supplier and the customer of a distribution utility in New York state, excluding the Long Island Power Authority and its utility contractor. These provisions are designed to ensure that accurate information is provided to customers and will require minimal or no changes to existing DER supplier business practices.

SECTION 2A: SALES AGREEMENTS (Generally Applicable)

A. A DER supplier shall obtain a customer's consent to a sales agreement prior to billing a customer or enrolling a customer in a DSP, utility, NYSERDA, Commission, or Department-run or authorized program.
   1. The sales agreement may be a written contract signed by the customer or the customer's verbal or electronic authorization to enter into an agreement with the DER supplier for the products and services specified.
   2. A DER supplier entering into a sales agreement for a large or ongoing transaction shall retain the sales agreement and record of customer consent for at least two years or the length of the agreement, whichever is longer.
      a. A large transaction is any transaction in which a customer makes a payment to a DER supplier of $500 or more.
      b. An ongoing transaction is any transaction which, regardless of the size of the transaction, either (a) results in the DER supplier billing the customer for a period of three or more months or (b) results in the DER supplier enrolling the customer in a program through which the customer or the DER supplier will receive compensation, including bill credits, for a period of three or more months.

SECTION 2B: GENERAL MARKETING STANDARDS (Generally Applicable)

A. DER supplier shall:
   1. Not engage in misleading or deceptive conduct as defined by state or federal law, or by Commission rule, regulation, or Order;

2. Not make false or misleading representations including misrepresenting rates or savings offered by the DER supplier;
3. Provide a mass market customer upon request with written information regarding the DER supplier and its products or services or with a website address at which information can be obtained;
4. Use reasonable efforts to provide accurate and timely information about services and products. Such information will include information about rates, contract terms, termination fees and right of cancellation;
5. Ensure that any product or service offering that is made by a DER supplier in a transaction with a mass market customer contains information written in plain language that is designed to be understood by the customer. This shall include providing any written information to the customer in a language in which the DER supplier representative has substantive discussions with the customer or in which a contract is negotiated;
6. Comply with local laws and regulations regarding door-to-door marketing;
7. Comply with the state and federal laws regarding telemarketing, including the Do-Not-Call law;
8. Cooperate with the Department and PSC regarding the practices prescribed by these UBP-DERS and with other regulatory entities, including law enforcement, in investigations concerning deceptive marketing practices.
9. Not contract with or otherwise do business with Energy Brokers and Energy Consultants that are not registered with the Commission pursuant to UBP-DERS Section 4. Customer enrollments facilitated by an unregistered Energy Broker or Energy Consultant shall be invalid.

SECTION 2C: CUSTOMER DATA (Generally Applicable)

A. Applicability. This Section establishes practices for release and protection of customer information by distribution utilities or DSPs to DER suppliers using EDI. It also identifies the content of information sets transmitted using EDI standards. The distribution utility or DSP and a DER supplier shall use standards, systems, and protocols developed for these purposes for transmittal of customer information. This section does not impose any obligations on DER suppliers that do not request or receive data using EDI.

B. Customer Authorization Process. The distribution utility or DSP shall provide information about a specific customer

requested by an EDI-eligible DER supplier authorized by the customer to receive the information.

1. In obtaining customer authorization, a DER supplier shall inform the customer of the types of information to be obtained, to whom it will be given, how it will be used, and how long the authorizations will be valid. The authorization is valid for no longer than six months unlessthe sales agreement provides for a longer time.
2. A distribution utility or DSP shall assume that a DER supplier obtained proper customer authorization if the DER supplier submits a valid information request, as defined in EDI rules.
3. A DER supplier shall retain, for a minimum of two years or for the length of the sales agreement, whichever is longer, verifiable proof, including but not limited to a recording or signed writing, of authorization for each customer. Verification records shall be provided by a DER supplier, upon request of the Department, within five calendar days after a request is made. Locations for storage of the records shall be at the discretion of the DER supplier.
4. Upon request by a customer, a distribution utility or DSP shall block access by DER suppliers to information about the customer.
5. A DER supplier and its agent shall comply with statutory and regulatory requirements pertaining to applicable state and federal do-not-call registries.

C. Customer Information Provided to DER suppliers

1. Release of Information. The distribution utility or MDSP shall respond within two business days to valid requests for information as established in EDI transaction standards and within five business days to requests for data and information for which an EDI transaction standard is not available. The distribution utility or MDSP shall provide the reason for rejection of any valid information request.
2. Customer Contact Information Set. The distribution utility or DSP, to the extent it possesses the information, shall provide, upon a DER supplier request, consumption history for an electric account and consumption history and/or[16] a gas profile for a gas account.
   a. Consumption history[17] for an electric account shall include:
      1. Customer’s service address;
      2. Electric account number;

[16] If a distribution utility or DSP offers a gas profile and consumption history, a DER supplier may choose either option. A distribution utility or DSP shall make available, upon

request, class average load profiles for electric customers.

[17] A distribution utility, in addition to EDI transmittal, may provide web-based access to customer history information

3. Sales tax district used by the distribution utility and whether the utility identifies the customer as tax exempt;
4. Rate service class and subclass or rider by account and by meter, where applicable;
5. Electric load profile reference category or code, if not based on service class, whether the customer's account is settled with the NYISO utilizing an actual 'hourly' or a 'class shape' methodology, or Installed Capacity (ICAP) tag, which indicates the customer's peak electricity demand;
6. Customer's number of meters and meter numbers;
7. Whether the customer receives any special delivery or commodity "first through the meter" incentives, or incentives from the New York Power Authority;
8. The customer's Standard Industrial Classification (SIC) code;
9. Usage type (e.g., kWh), reporting period, and type of consumption (actual, estimated, or billed);
10. Whether the customer's commodity service is currently provided by the utility;
11. 12 months, or the life of the account, whichever is less, of customer data and, upon separate request, an additional 12 months, or the life of the account, whichever is less, of customer data, and, where applicable, demand information;[18] if the customer has more than one meter associated with an account, the distribution utility or DSP shall provide the applicable information, if available, for each meter; and
12. Electronic interval data in summary form (billing determinants aggregated in the rating periods under a distribution utility's tariffs), and if requested in detail, an acceptable alternative format.

b. A gas profile for a gas account shall include:

1. Customer's service address;
2. Gas account number;
3. Customer's number of meters and meter numbers;
4. Sales tax district used by the distribution utility for billing and whether the utility identifies the customer as tax exempt;
5. The customer's Standard Industrial Classification (SIC) code;

[18] A distribution utility may provide data for a standard 24

months or life of the account, whichever is less, as part of its Customer Contact Information Set.

6. Whether the customer's commodity service is currently provided by the utility;
7. Rate service class and subclass or rider, by account and by meter, where applicable;
8. Date of gas profile; and,
9. Weather normalization forecast of the customer's gas consumption for the most recent 12 months or life of the account, whichever is less, and the factors used to develop the forecast.

D. Charges for Customer Data. No distribution utility or DSP shall impose charges upon DER suppliers for provision of the information described in this Section through EDI.

E. Unauthorized Information Release. A DER supplier, its employees, agents, and designees, is prohibited from selling, disclosing or providing any customer information obtained from a distribution utility or DSP, in accordance with this Section, to others, including their affiliates, unless such sale, disclosure or provision is required to facilitate or maintain service to the customer or is specifically authorized by the customer or required by legal authority. If such authorization is requested from the customer, the DER supplier shall, prior to authorization, describe to the customer the information it intends to release and the recipient of the information.

F. NIST Cybersecurity Framework. DER suppliers that obtain customer information from the distribution utility or DSP must have processes and procedures in place regarding cybersecurity consistent with the National Institute of Standards and Technology Cybersecurity Framework.

G. Data Security. DER suppliers that obtain customer information from the distribution utility or DSP must comply with any data security requirements imposed by that utility or by Commission rules on ESCOs and/or any data security requirements associated with EDI eligibility.

SECTION 2D: RESPONSIBILITY FOR CONTRACTORS AND OTHER THIRD PARTY AGENTS (Generally Applicable)

A. If a DER supplier enlists a third party to assist them in marketing, data collection or analysis, billing, or any other activity, that DER supplier is responsible for making commercially reasonable efforts to ensure that the third

party's activities conform with the relevant regulations and requirements.

B. The provisions of the preceding subsection also apply when a DER supplier purchases a list of potential customers or similar information from a third party that assembled that list through its own advertising. In such cases, the DER supplier purchasing the list is responsible for making reasonable efforts to ensure that the list was not assembled through deceptive marketing.

SECTION 2E: CUSTOMER INQUIRIES AND COMPLAINTS (Generally Applicable)

A. Department Staff will accept inquiries and complaints related to DER suppliers and will make efforts to investigate and resolve those complaints and, if necessary, bring those complaints to the Commission for consideration.

B. For customers of large or ongoing transactions, as defined in Section 2A.A.2, DER suppliers must retain summary complaint records for at least two years from the date of the transaction or for the length of the agreement, whichever is longer.

SECTION 2F: CONSEQUENCES FOR VIOLATIONS (Generally Applicable)

A. A DER supplier may be held responsible for actions by its officers, its employees, and contractors or other third-party agents acting on its behalf or under its direction. In addition, a DER supplier purchasing a customer list or similar information or services from a third-party marketer is responsible for making reasonable efforts to ensure that the list was not assembled in a manner inconsistent with the UBP-DERS.

B. A DER supplier may be subject to the consequences listed in UBP-DERS Section 2F.C.2. for reasons, including, but not limited to:
   1. False or misleading information in the registration package required of CDG and On-Site Mass Market DG Providers;
   2. Failure to adhere to the policies and procedures described in its sales agreement;

3. Enrolling a customer in a DSP, utility, NYSERDA, Commission, or Department-run or authorized program or billing a customer without obtaining that customer's consent through a sales agreement or similar method;
4. Failure to comply with required customer protections;
5. Failure to comply with relevant reporting requirements or Department oversight requirements;
6. Failure to provide notice to the Department of any material changes in the information contained in the Registration Form or registration package, if required;
7. Failure to comply with the UBP-DERS;
8. Failure to comply with procedures, protocols or practices for communicating with distribution utilities or DSPs as required by the Commission;
9. Failure to comply with other Commission Orders, Rules or Regulations; or
10. A material pattern of consumer complaints on matters within the DER supplier's control.

C. In determining the appropriate consequence for a failure or non-compliance in one or more of the categories set forth in UBP-DERS Section 2F.B., the Commission or Department may take into account the nature, the circumstances, including the scope of harm to individual customers, and the gravity of the failure or non-compliance, as well as the DER supplier's history of previous violations and whether the DER supplier has taken any actions or made any commitment to remediate any harm caused by the violation.
   1. The Commission or Department shall:
      a. Either (a) notify the DER supplier in writing of its failure to comply and request that the DER supplier take appropriate corrective action or provide remedies within the directed cure period, which will be based on a reasonable amount of time given the nature of the issue to be cured; or (b) order that the DER supplier show cause why a consequence should not be imposed.
      b. The Commission may impose the consequences listed in subparagraph b of this paragraph if (a) the DER supplier fails to take corrective actions or provide remedies within the cure period; or (b) the Commission determines that the incident or incidents of non-compliance are substantiated and the consequence is appropriate.
      c. Consequences shall not be imposed until after the DER supplier is provided notice and an opportunity to respond.
      d. The notice of consequences imposed by the Commission will be published on the Department's website.

2. Consequences for non-compliance in one or more of the categories set forth in UBP-DERS Section 2F.B. may include one or more of the following restrictions on a DER supplier's access to programs, tariffs, or solicitations initiated or controlled by the Commission, Department Staff, a utility, or NYSERDA:
   a. Suspension from selling products or services to a specific distribution utility or DSP or to all distribution utilities or DSPs in New York State;
   b. Suspension from enrolling new customers;
   c. Suspension of the ability to acquire customer data by means established by the Commission in either a specific service territory or all service territories in New York State;
   d. Imposition of requirements to modify procedures to obtain customer authorization for purchase, and to verify such customer authorization;
   e. Imposition of requirements to modify procedures regarding the protection of consumer information;
   f. Imposition of a requirement to file a customer service improvement plan identifying actions to be taken and timelines to improve customer service, and/or a requirement to file periodic reports identifying the extent to which the customer service improvement plan is achieving its objectives;
   g. Revocation of a DER supplier's eligibility to access programs, tariffs, or solicitations initiated or controlled by the Commission, Department Staff, a utility, or NYSERDA and/or acquire customer data by means established by the Commission; and
   h. Any other measures that the Commission may deem appropriate.
3. The Commission may give a DER supplier the option to avoid consequences or face lesser consequences on the condition that it provide refunds, corrective pricing, or other remedies to customers impacted by its violation.

SECTION 2G: OVERSIGHT REQUIREMENTS (Generally Applicable)

A. Applicability. This Section establishes requirements for DER suppliers to assist the Department in monitoring the development, conduct and performance of New York's energy markets.

B. All DER suppliers shall:
   1. Provide information on complaints received regarding DER products and services, as requested by the Department.

2. Provide information as requested by Department Staff, in relation to its efforts in monitoring the development, conduct and performance of energy markets. Such information requests may be through informal requests or interrogatories, including but not limited to, information regarding the DER supplier's business operations and financials.
3. Permit Department Staff to examine the books, accounts, contracts, records, and documents of the DER supplier.
4. Permit Department Staff to access any information needed to audit the DER supplier and cooperate with Department Staff's conducting of such an audit.

SECTION 3: PROVISIONS SPECIFIC TO CDG AND ON-SITE MASS MARKET DG PROVIDERS

Applicability. The provisions of these sections apply to all CDG Providers and On-Site Mass Market Distributed Generation (DG) providers.

SECTION 3A: REGISTRATION REQUIREMENTS (CDG and On-Site Mass Market DG Providers)

A. Applicability. This Section sets forth the process that CDG Providers and On-Site Mass Market DG Providers are required to follow to register with the Department.

B. Registration Package.
   1. Registrants planning to become CDG or On-Site Mass Market DG Providers are required to submit to the Department a registration package containing the following information and attachments:
      a. A completed Registration Form. The registration form is available on the Department's website at https://dps.ny.gov/distributed-energy-resource-der-regulation-and-oversight. Information that must be provided on or attached to the registration form includes:
         1. Name, postal and e-mail addresses, and telephone and fax numbers for the registrant's main office;
         2. Names and addresses of any entities that hold ownership interests of 10% or more in the CDG or On-Site Mass Market DG Provider, including a contact name for corporate entities and partnerships;
         3. Detailed explanation of any criminal or regulatory sanctions imposed during the previous 24 months against the CDG or On-Site Mass Market DG Provider, any senior officers of the DER supplier, or any

entities holding ownership interests of 10% or more in the CDG or On-Site Mass Market DG Provider;

4. Disclosure of any decisions or pending escalated regulatory actions in other states that affect the CDG or On-Site Mass Market DG Provider's ability to operate, such as suspension, revocation, or limitation of operating authority;
5. A list and description of current investigations involving the CDG or On-Site Mass Market DG Provider being conducted by law enforcement or regulatory entities.
6. A summary of the registrant's history of bankruptcy, dissolution, merger, or acquisition in the 24 months immediately preceding the data of application;
7. Detailed explanation regarding ongoing investigations by the US Securities and Exchange Commission, the US Department of Justice, or the US Federal Energy Regulatory Commission;
8. Identification of the employee(s) responsible for resolving consumer complaints received by the Department;
9. A list of material categories of CDG or On-Site Mass Market products or services that will be offered and the customer classifications (i.e., residential, small/midsized non-residential) to whom they will be offered;
10. A list and description of any security breaches associated with customer proprietary information in the last 24 months, as well as a thorough description of the actions taken in response to any such instances.

b. Sample sales agreements and sample bills for each customer class for each material category of the CDG or On-Site Mass Market products or services that will be offered; and
c. Proof of registration with the New York State Department of State.

2. The Department shall maintain a list of CDG and On-Site Mass Market DG Providers that successfully complete these requirements.
3. A CDG Provider On-Site Mass Market DG Provider that knowingly makes false statements in its registration package shall be subject to denial or revocation of eligibility.
4. If the registration package contains information that is a trade secret or sensitive for security reasons, the registrant may request that the Department withhold disclosure of the information, pursuant to the New York

State Freedom of Information Law (Public Officers Law Article 6) and Public Service Commission regulations (16 NYCRR §6-1.3).

C. Department Review Process

1. The Department shall review each registration package submitted. The CDG Provider or On-Site Mass Market DG Provider shall immediately notify the Department of any material changes in the information submitted in the Registration Form and/or registration package that occurs during the Department review process. The Department shall notify the registrant, in writing, of any deficiencies in the registration package. The CDG Provider must modify the registration package in response to such a notification within 30 days.
2. If the modified package does not remedy the deficiency identified by Staff, the Department shall notify the CDG or On-Site Mass Market DG Provider in writing and shall refer the matter to the Commission for its consideration. The CDG or On-Site Mass Market DG Provider will have the opportunity to present information to the Commission in support of its registration.
3. For CDG Providers or On-Site Mass Market DG Providers that begin operating in New York State after December 1, 2017, a registration package must be submitted and approved before the CDG Provider or On-Site Mass Market DG Provider begins marketing to customers. Department Staff will review the registration package within 30 days of submittal and notify the registrant, in writing, either that the registration is accepted as complete or that deficiencies exist in the registration package.

D. Maintaining Active Status

1. CDG Providers and On-Site Mass Market DG Providers shall submit by March 31 of each year (March 31 Statement):
   a. A statement that the information and attachments in its Registration Form and registration package are current; or
   b. A description of revisions to the Registration Form and registration package along with a copy of the revised portions; and
2. A CDG or On-Site Mass Market DG Provider shall update all the information it submitted in its original registration package to the Department every three years, starting from the filing date of its registration package. A Provider's status as an eligible provider is continuous from the filing date of its registration package, unless revoked or otherwise limited in accordance with UBP-DERS Section 2F.

If the three-year anniversary falls within one month of April 1, the Provider shall resubmit its registration package in lieu of the April 1 statement.

3. A CDG or On-Site Mass Market DG Provider shall submit at other times during the year:
   a. A description of any material revision in the terms and conditions applicable to the business relationship between the Provider and its customers, including provisions governing the process for termination of sales agreements. For any such revisions, the Provider shall provide a copy of the revised portions. This provision does not require CDG Providers to file sample sales agreements based individually negotiated sales agreements with large customers or to update sample sales agreements based on changes made for individual customers.
   b. Material Change in Financial Status including (1) bankruptcy or insolvency filings, (2) initiation of lawsuits which could materially and adversely impact the current or future ability of the Provider to meet its financial obligations.
   c. Changes in the Provider's business and customer service information provided in the application.
   d. Changes in personnel identified in the registration package as responsible for resolving consumer complaints received by the Department and referred to the Provider.

SECTION 3B: ENHANCED MARKETING AND ADVERTISING STANDARDS (CDG and On-Site Mass Market DG Providers)

A. Applicability. This Section describes the enhanced standards that CDG Providers, On-Site Mass Market DG Providers and their marketing representatives must follow when marketing and advertising products and services to potential mass market customers in New York.

B. Training of Marketing Representatives
   1. Providers shall ensure that the training of their marketing representatives includes:
      a. Knowledge of this Section and awareness of the other Sections of the UBP-DERS;
      b. Knowledge of the Provider's products and services;
      c. Knowledge of the Provider's rates and payment options and the customers' right to cancel, including the applicability of a termination fee;
      d. Knowledge of the applicable provisions of the Home Energy Fair Practices Act that pertains to residential customers; and,

e. The ability to provide the customer with a toll-free number from which the customer may obtain information about the Provider's mechanisms for handling billing questions, disputes, and complaints.

C. When marketing materials or information conveyed to mass market customers or potential mass market customers includes savings estimates, CDG and mass market on-site DG providers must include, in addition to any other forecasts used, a forecast using the following baseline: a three-year average of actual historical utility rates for the three most recent calendar years for which data is available, for the customer's actual utility and service class. The provider may choose to apply an assumed escalation rate of up to 3% per year to this baseline in generating a forecast; if the provider does so, it must disclose the escalation rate used. The forecast generated must estimate savings for the same potential contract term as any other forecast provided. This forecast must be presented with similar prominence to other forecasts and all forecasts must be appropriately labeled to permit customers to understand their source.

Example: A CDG Provider prepares marketing materials for SC-1 customers, showing their expected savings over a 10-year contract term. Over the past 3 calendar years, SC-1 customers in that utility territory have had average utility rates of $0.10/kWh, $0.09/kWh, and $0.08/kWh. In addition to any other savings forecasts, the CDG developer must provide a 10-year savings estimate to the customer based on a utility rate of $0.09/kWh, with no more than a 3% annual escalation rate, and identify the escalation rate used.

D. Contact with Customers
1. This subsection applies only to contacts with Mass Market Customers.
2. In-Person Contact with Mass Market Customers
Marketing representatives who contact mass market customers in person at a location other than the Provider's place of business for the purpose of selling any product or service shall, before making any other statements or representations to the customer:
a. Introduce him or herself with an opening statement that identifies the Provider which he or she represents; identifies him or herself as a representative of that specific Provider; explains that he or she does not represent the distribution utility; and, explains the purpose of the solicitation.

b. Produce identification, to be visible at all times thereafter, which:
   1. Prominently displays in reasonably sized type face the first name and employee identification number of the marketing representative;
   2. Displays a photograph of the marketing representative and depicts the legitimate trade name and logo of the Provider they are representing; and,
   3. Provides the Provider's telephone number for inquires, verification and complaints.
c. A CDG or On-Site Mass Market DG Provider marketing representative must provide each prospective mass market customer with a business card or similar tangible object with the marketing representative's first name and employee identification number; Provider's name, address, and phone number; date and time of visit and website information for inquires, verification and complaints.
d. A CDG or On-Site Mass Market DG Provider marketing representative must provide the customer with written information regarding the Provider's products and services immediately upon request which must include the Provider's name and telephone number for inquires, verification and complaints. Any written materials, including contracts, sales agreements, and marketing materials must be provided to the customer in the same language utilized to solicit the customer.
e. When it is apparent that the customer's English language skills are insufficient to allow the customer to understand and respond to the information conveyed by the marketing representative or when the customer or another third party informs the marketing representative of this circumstance, the marketing representative shall either find a representative in the area who is fluent in the customer's language to continue the marketing activity in his/her stead or terminate the in-person contact with the customer. The use of translation services and language identification cards is permitted.
f. A marketing representative must leave the premises of a customer when requested to do so by the customer or the owner/occupant of the premises.
g. All Providers who have marketing representatives conducting door-to-door marketing must maintain a daily record, by zip code, of the territories in which the Provider's marketing representatives have conducted door-to-door marketing. The information should be in a form that can be reported to Staff upon request, and should be retained by the Provider for a minimum of six months.

3. Telephone Contact with Mass Market Customers

Marketing representatives who contact mass market customers by telephone for the purpose of selling any product or service offered by the Providers shall:

a. Provide the marketing representative's first name and, on request, the identification number;
b. State the name of the Provider on whose behalf the call is being made;
c. State the purpose of the telephone call;
d. When it is apparent that the customer's English language skills are insufficient to allow the customer to understand and respond to the information conveyed by the marketing representative or when the customer or another third party informs the CDG marketing representative of this circumstance, the marketing representative will immediately transfer the customer to a representative who speaks the customer's language, if such a representative is available, or terminate the call; and,
e. Remove customers' names from the marketing database upon customers' request.
f. When marketing to residential customers, the marketing representative must also:
    1. Explain that he or she does not represent the distribution utility;
    2. Explain the purpose of the solicitation; and,
    3. Provide any written materials, including contracts, sales agreements, and marketing materials to the customer in the same language utilized to solicit the customer.

SECTION 3C: MINIMUM STANDARDS FOR SALES AGREEMENTS (CDG and On-Site Mass Market DG Providers)

A. Applicability. This Section establishes minimum standards for sales agreements between CDG and On-Site Mass Market DG Providers (Providers) and mass market customers.

B. A Provider, or its agent, may solicit and enter into a sales agreement with a customer subject to the following requirements.
    1. The DER supplier shall obtain a customer agreement to purchase the product or service and customer authorization to release information to the DER supplier, and retain verifiable proof of such authorization for at least two years or the length of the agreement, whichever is longer.
    2. Sales agreements shall include the following information written in plain language in the same language that the Provider has used to market to the customer:

A. Terms and conditions applicable to the business relationship between the Provider and the customer which includes:
   1. Provisions governing the process for rescinding or terminating an agreement by the Provider or the customer including provisions stating that a residential customer may rescind the agreement within three business days after its receipt without charge or penalty;
   2. The price, the terms and conditions of the agreement, including the term and end date, if any, of the agreement, the amount of the termination fee and the method of calculating the termination fee, if any, the amount of late payment fees, if applicable, and the provisions, if any, for the renewal of the agreement;
   3. A clear description of the conditions, if any, that must be present in order for savings to be provided to the customer, if savings are guaranteed.
   4. Information for residential customers of their rights under HEFPA; and
   5. Information regarding contacting the Department for dispute resolution.
   6. DER supplier contact information, including a local or toll-free number from the customer's service location.
   7. A clear description of any escalation of pricing over term of the contract, including the full details of any methodology used for determining that escalation.

C. In addition to the requirements of subsection B, contracts for on-site mass market distributed generation must include a description of the distributed generation system, including the make and model of major system components, and an outline of system specifications. All contracts shall include, at a minimum:
   1. For purchased systems, the total system purchase price, itemized costs of system components, and any other taxes, fees or overheads that are the responsibility of the customer; or
   2. For leases or purchased power agreements (PPAs), the total number of payments, amount of payments, payment frequency, and due date;
   3. An estimate of annual energy output, including loss analysis (e.g. in the case of a solar system, the percentage of the available solar resource that the solar electric system will receive, accounting for losses from shading, array azimuth, and tilt);
   4. The rate at which the customer can be compensated for any electricity sold to the utility;

5. The installation location;
6. Installation schedule;
7. The potential value of all federal, state, and local tax credits, electric utility rate credits, Renewable Energy Credits, incentives, or rebates that the customer may receive and/or be required to sign over to the DER provider;
8. Disclosure of any restrictions on the customer's ability to sell the system and/or his/her property;
9. System and/or production warranties;
10. Disclosure of any binding arbitration clauses or other terms that limit the customer's right to enforce the contract or seek damages from the courts; and
11. Assignment of responsibilities (e.g., for maintenance and repairs, insurance coverage, etc.), including whether such maintenance or repairs may be sold or transferred to a third party.

D. Early Termination Fees
1. In addition to the requirements of subsection B, CDG contracts that contain an early termination fee:
   1. Must contain an early termination fee of $200 or less;
   2. Must include a notification period of 90 days or less;
   3. Must include waiver of the early termination fee if the notification requirement is fulfilled and the customer finds their own replacement, subject to the customer eligibility requirements set by the DERS; or, where the customer is not offered the option to find their own replacement, must include waiver of the early termination fee if the notification requirement is fulfilled.

E. Production Guarantees
1. In addition to the requirements of subsection B and, where applicable, subsection C, all purchase contracts or other contracts where bills are not based on actual system production must include a production guarantee.

SECTION 3D: STANDARD CUSTOMER DISCLOSURE STATEMENTS (CDG and On-Site Mass Market DG Providers)

A. A completed Standard Customer Disclosure Statement shall be provided to all customers of CDG or On-Site Mass Market DG Providers as part of the sales agreement. Standard Customer Disclosure Statements are available on the Department's website at https://dps.ny.gov/distributed-energy-resource-der-regulation-and-oversight.

B. In the event that the text in the Standard Customer Disclosure

Statement differs from or is in conflict with a term stated elsewhere in the agreement, the term described by the text in the Standard Customer Disclosure Statement shall constitute the agreement with the customer notwithstanding a conflicting term expressed elsewhere.

SECTION 3E: CUSTOMER INQUIRIES AND COMPLAINTS (CDG and On-Site Mass Market DG Providers)

A. Applicability. This Section establishes requirements for responses by a CDG or On-Site Mass Market DG Provider (Provider) to customer inquiries concerning CDG products or services. Providers shall respond to customer inquiries sent by means of electronic mail, telecommunication services, mail, or in meetings. The subjects raised in inquiries may result in the filing of complaints.

B. General
   1. Providers shall provide consistent and fair treatment to customers.
   2. Providers shall maintain processes and procedures to resolve customer inquiries without undue discrimination and in an efficient manner and provide an acknowledgement or response to a customer inquiry within 2 days and, if only an acknowledgement is provided, a response within 14 days.
   3. Providers shall provide local or toll-free telephone access from the customer's service area to customer service representatives (CSRs) responsible for responding to customer inquiries and complaints. The Provider's customer service center should be operational at least eight hours per day Monday through Friday except holidays, starting no earlier than 7 AM EST.
   4. If the inquiry is specific to utility service, the CSR shall take one of the following actions:
      a. Forward/transfer the inquiry to the utility;
      b. Direct the customer to contact the utility; or,
      c. Contact the utility to resolve the matter and provide a response to the customer.
   5. Each Provider shall maintain information regarding customer inquiries and complaints pertaining to its products and services and designate a representative to provide information relating to customer inquiries and complaints to the Department.

C. Emergency Contacts
   1. An emergency call means any communication from a customer concerning an emergency situation relating to the distribution system, including, but not limited to, reports

of gas odor, natural disaster, downed wires, electrical contact, or fire.

2. A Provider's CSR shall transfer emergency calls directly to the distribution utility or provide the distribution utility's emergency number for direct contact to the distribution utility.

SECTION 3F: REPORTING REQUIREMENTS (CDG and On-Site Mass Market DG Providers)

A. Applicability. This Section establishes requirements for reporting by a CDG or On-Site Mass Market DG Provider (Provider).

B. Each Provider shall file an annual report by March 31 containing information for the previous calendar year including aggregate number of customers served, a summary of services provided, and information on the number and classification of complaints received in a format to be

established by the Department, to assist the Department in monitoring CDG and On-Site Mass Market DG markets.

C. Each CDG Sponsor shall send an annual report for each calendar year to each of its subscribers by March 31 of the following year. The annual report must include the amount of credits that the member has received, expressed both in kWh and dollars, as well as the total amount the customer has paid in subscription fees and any other payments to the Sponsor. The report shall follow the standard format available on the Department's website at https://dps.ny.gov/distributed-energy-resource-der-regulation-and-oversight.

D. A CDG Sponsor that generates or allocates banked credits in a calendar year must file a report by March 31 of the following year detailing how many credits were banked, how many banked credits were allocated, what percentage of that allocation was provided to mass market customers, and what percentage was allocated to large customers.

SECTION 4: ENERGY BROKERS AND ENERGY CONSULTANTS

A. Applicability

This Section sets forth the process that an Energy Broker or Energy Consultant is required to follow in order to register with the Department of Public Service (Department) to provide services as an Energy Broker or Energy Consultant in New York State.

B. Registration Requirements

1. Applicants seeking to act as an Energy Broker or Energy Consultant in New York State are required to register with the Department by submitting a registration package containing the following information and attachments:
   a. A completed Energy Broker/Consultant Registration Form (Registration Form), available on the Department website (www.dps.ny.gov). The Registration Form shall require the applicant to:
      i. identify the name, postal and e-mail addresses, and telephone and fax numbers for the applicant's main office;
      ii. identify the names and addresses of any entities that hold ownership interests of 10% or more in the Energy Broker or Energy Consultant, including a contact name for corporate entities and partnerships;
      iii. identify the methods by which it intends to

market energy products and services to customers;

iv. identify the category/categories of energy products it intends to market to customers (e.g. commodity service, distributed solar, or demand response);

v. disclose each state in which the applicant operates, or has operated, as an Energy Broker or Energy Consultant and provide any data in its possession regarding complaint history;

vi. disclose any criminal or regulatory sanctions imposed during the previous 36 months against the applicant, any senior officers of the applicant, or any entities holding ownership interests of 10% or more in the applicant;

vii. disclose any other trade names used by the applicant and the state in which the trade name was/is used;

viii. disclose and describe any data breaches associated with customer proprietary information that occurred in any jurisdiction within the 36 months preceding the date of registration, as well as any actions taken by the applicant in response to the incident(s);

ix. disclose and describe specific policies and procedures established by the applicant to secure customer data; and

x. disclose any history of bankruptcy, dissolution, merger, or acquisition activities in the 36 months preceding the date of registration, including data for affiliates of the Energy Broker or Energy Consultant applicant and upstream owners and subsidiaries.

b. A sample standard agreement between the Energy Broker or Energy Consultant and the customer;

c. Sample forms of the notices sent upon assignment of sales agreements, discontinuance of service, or transfer of customers to other providers;

d. Procedures used to obtain customer authorization for access to a
customers' historic usage or credit information;

e. Sample copies of informational and promotional materials that the applicant uses for mass marketing purposes;

f. Sample disclosures of compensation;

g. Proof of registration with the New York State Department of State or proof of an assumed name certificate (DBA) filed with the county clerk.

h. Proof of registration to act as a marketer in any municipality where such registration is required;

i. An annual $500 registration fee;
j. A demonstration of financial accountability in the form of either:
   i. An irrevocable standby letter of credit issued by a reputable financial institution in the amount of $100,000 for registering Energy Brokers and $50,000 for registering Energy Consultants, that meets the following conditions:
      1. The New York State Department of Public Service shall be named as beneficiary and the letter of credit applicant shall be clearly named;
      2. Any number of partial drawings shall be permitted from time to time;
      3. The process for making a drawing, including any required forms and communications or delivery instructions shall be stated;
      4. If a drawing is made, payment shall be made to the beneficiary within 5 business days;
      5. Any expiration date shall be specified and options for renewal, including automatic renewal, shall be stated.
      6. The applicant's filing for bankruptcy, receivership, or any other debt-relief petition shall in no way affect the issuer's liability to the beneficiary under the letter of credit.
      7. All commissions, fees, and other charges with respect to the letter of credit shall be paid by the applicant;
      8. Except for increases to the amount, the letter of credit shall not be amended, changed, or modified without express written consent of the beneficiary;
      9. The beneficiary shall not be deemed to have waived any rights under the letter of credit unless an authorized representative thereof has signed a dated written waiver. No such waiver, unless expressly stated therein, shall be effective as to any subsequent transaction, nor to any continuance of a breach; and
      10. If the beneficiary should require a replacement of the letter of credit due to loss or destruction of the original, the issuer will provide one upon request; or

ii. A surety bond issued by a reputable financial institution on a form to be prescribed by the Department with a penal sum of $100,000 for registering Energy Brokers; and $50,000 for registering Energy Consultants, that meets the following conditions:

1. The New York State Department of Public Service shall be named as the obligee;
2. As a condition of the bond, the applicant and its employees are required to comply with all applicable provisions of the laws of the State of New York and the rules, regulations, and orders of the Commission and of the Department, including, but not limited to, the Uniform Business Practices and the Uniform Business Practices for Distributed Energy Resource Suppliers;
3. If the applicant breaches the bond's conditions, the Department may recover against the bond for the reimbursement of fees or other charges that the Department has determined were improperly collected from customers; for the payment of past due fees or other charges owed by the applicant to the Department, including any unpaid penalties; and for any customer reimbursements or other remedial or financial obligations of the applicant in the event of the applicant's insolvency, liquidation, or bankruptcy or the expiration, surrender, or revocation of the applicant's registration;
4. Immediately upon recovery on any claim or action on or under the bond, the applicant shall file a new or supplemental bond restoring the face amount of the bond to the required amount;
5. The bond shall be continuous and shall remain in force until the surety is released from liability by the Department or until the bond is canceled by the surety. Without prejudice to any liability accrued prior to the cancellation, the surety may cancel the bond on ninety days' advance notice in writing sent by mail to the applicant and to the Department;

6. The bond's termination shall not terminate or otherwise affect any liability of the applicant or its employees to its customers or to the Department;
7. The surety will give prompt notice to the applicant and to the Department of any notice received or action filed alleging the insolvency or bankruptcy of the surety or alleging any violations of regulatory requirements which could result in suspension or revocation of the surety's authority to do business. In the event the surety becomes unable to fulfill its obligation under the bond for any reason, notice shall be given immediately to the applicant and to the Department;
8. All commissions, fees, and other charges with respect to the surety bond shall be paid by the applicant.

k. A completed Service Provider Contact Form, which can be found on the Department's website http://www.dps.ny.gov, identifying the Energy Broker or Energy Consultant's employee(s) responsible for resolving consumer complaints received by the Department and referred to the Energy Broker or Energy Consultant; and
l. An Officer Certification document sworn to by a high-level officer of the applicant, such as the Chief Executive Officer, President, or the equivalent, in which the officer affirms that the information contained in the registration package is accurate and truthful, and that the applicant is willing and able to comply with all applicable laws and regulations, including these UBPs.

2. An applicant that knowingly makes false statements in its registration package is subject to denial or revocation of approval.
3. If the registration package contains information that is a trade secret or sensitive for security reasons, the applicant may request that the Department withhold disclosure of the information, pursuant to the Freedom of Information Law (Public Officers Law Article 6) and Public Service Commission regulations (16 NYCRR §6-1.3).

C. Department Review Process

1. The Department shall review the Registration Form information and documentation submitted by each applicant and make a determination as to the applicant's likelihood of compliance with the Uniform Business Practices (UBP) if

the applicant's registration was approved. To enable the Department to make a thorough assessment of a registration, an applicant shall notify the Department of any major changes in the information submitted in the Registration Form and/or registration package that occurs during the Department review process.

2. Following its review of the registration information and documentation, the Department shall advise the applicant, in writing, if the registration package is approved and the applicant is registered to operate in the State.
3. If following its review of the registration package information and documentation the Department determines that the applicant is not likely to comply with the UBP if the applicant were deemed eligible, the Department may recommend to the Commission that, for good cause shown, the Commission deny the applicant's registration.
4. In any instance that the Department recommends to the Commission that an applicant's registration be denied, the applicant shall be afforded an opportunity to provide the Commission with a response in rebuttal to the Department's recommendation and in support of its registration before the Commission renders a final determination.
5. The Department shall periodically review the registration packages of each Energy Broker and Energy Consultant operating in New York State and make a recommendation to the Commission if the Department finds that the Energy Broker or Energy Consultant should not be permitted to continue operating in New York State.

D. Maintaining and Updating Registration

1. An Energy Broker or Energy Consultant shall submit by August 31st each year:
   a. a statement that the information and attachments in its Registration Form and registration package are current; or
   b. a description of revisions to the Registration Form and registration package and a copy of the revised portions or, at the Energy Broker or Energy Consultant's option, a copy of the revised portions identifying the revisions by highlighting or other means;
   c. An Officer Certification document, as required by Sub-section B.1.1 of this Section; and
   d. The required annual registration fee.
2. An Energy Broker or Energy Consultant shall submit at other times during the year:
   a. A description of any major change in the Registration Form and/or application package and a copy of the revised portions or, at the Energy Broker or Energy Consultant's option, a copy of the revised portions identifying the revisions by highlighting or other

means. For purposes of this Section, the term, "major change," means a revision in the terms and conditions applicable to the business relationship between the Energy Broker or Energy Consultant and its customers.

b. Changes in marketing plans, including changes to the list required in Sub- section B.1.a.iii of this Section.

c. Changes in the Energy Broker or Energy Consultant's business and customer service information displayed on the Department's Website.

d. Changes in personnel responsible for resolving consumer complaints received by the Department and referred to the Energy Broker or Energy Consultant.

E. Marketing

1. This sub-section describes the standards that Energy Brokers and Energy Consultants must follow when marketing to customers in New York State. Nothing in this Section shall be read to modify or remove the marketing standards contained in UBP Section 10.

a. Energy Brokers and Energy Consultants shall ensure that the training of their employees and/or marketing representatives includes:

i. Knowledge of this Section and awareness of the other Sections of the UBP;

ii. Knowledge of the products and services for which the Energy Broker or Energy Consultant is marketing;

iii. Knowledge of product rates/cost, payment options and the customers' right to cancel, including the applicability of an early termination fee;

iv. Knowledge of the applicable provisions of the Home Energy Fair Practices Act that pertains to residential customers; and,

v. The ability to provide the customer with a toll-free number from which the customer may obtain information about the Energy Broker or Energy Consultant's mechanisms for handling billing questions, disputes, and complaints.

b. In-Person Contact with Customers: Energy Brokers or Energy Consultants who contact customers in person at a location other than the Energy Broker or Energy Consultant's place of business, or the place of business of the third party on whose behalf the Energy Broker or Energy Consultant is marketing, for the purpose of selling any product or service offered by the Energy Broker or Energy Consultant, or offered by the third party on whose behalf the Energy Broker or Energy Consultant is marketing, shall, before making any other statements or representations to the

customer:

i. Introduce him or herself with an opening statement that identifies the entity which he or she represents, identifies him or herself as a representative of that specific entity; explains that he or she does not represent the distribution utility; and, explains the purpose of the solicitation.

ii. Produce identification, to be visible at all times thereafter, which: (1) prominently displays in reasonable size type face the first name and employee identification number of the marketing representative; (2) displays a photograph of the marketing representative and depicts the legitimate trade name and logo of the entity they are representing; (3) provides the Energy Broker or Energy Consultant telephone number, or the telephone number of the third party on whose behalf the Energy Broker or Energy Consultant is marketing, for inquires, verification, and complaints.

iii. An Energy Broker or Energy Consultant must provide each prospective residential customer a business card or similar tangible object with the marketing representative's first name and employee identification number; Energy Broker or Energy Consultant's name, address, and phone number, or the name, address, and phone number of the third party on whose behalf the Energy Broker or Energy Consultant is marketing; date and time of visit, and website information for inquires, verification and complaints.

iv. An Energy Broker or Energy Consultant must provide the customer with written information regarding the marketed products and services immediately upon request which must include the name and telephone number of the third party on whose behalf the Energy Broker or Energy Consultant is marketing for inquires, verification, and complaints. Any written materials, including but not limited to contracts, sales agreements, and marketing materials, must be provided to the customer in the same language utilized to solicit the customer.

v. Where it is apparent that the customer's English language skills are insufficient to allow the customer to understand and respond to the information conveyed by the Energy Broker or Energy Consultant or where the customer or

another third party informs the Energy Broker or Energy Consultant of this circumstance, the Energy Broker or Energy Consultant shall either find a representative in the area who is fluent in the customer's language to continue the marketing activity in his/her stead, or terminate the in-person contact with the customer. The use of translation services and language identification cards is permitted.

vi. An Energy Broker or Energy Consultant must leave the premises of a customer when requested to do so by the customer or the owner/occupant of the premises.

vii. All Energy Brokers or Energy Consultants conducting door-to-door marketing must maintain a daily record, by zip code, of the territories in which the Energy Broker or Energy Consultant has conducted door-to-door marketing. This information should be in a form that can be reported to Staff upon request and should be retained by the Energy Broker or Energy Consultant for a minimum of six months.

c. Telephone Contact with Customers: Energy Brokers and Energy Consultants who contact customers by telephone for the purpose of selling any product or service shall:

i. Provide the Energy Broker or Energy Consultant's first name and, on request, the identification number;

ii. State the name of the third party on whose behalf the call is being made, if applicable;

iii. State the purpose of the telephone call;

iv. Explain that he or she does not represent the distribution utility.

v. Where it is apparent that the customer's English language skills are insufficient to allow the customer to understand and respond to the information conveyed by the Energy Broker or Energy Consultant or where the customer or another third party informs the Energy Broker or Energy Consultant of this circumstance, the Energy Broker or Energy Consultant will immediately transfer the customer to a representative who speaks the customer's language, if such a representative is available, or terminate the call;

vi. Remove Customers' names from the marketing database upon Customers' request.

vii. Provide any written materials, including but not limited to contracts, sales agreements, and

marketing materials to the customer in the same language utilized to solicit the customer.

d. Conduct when Marketing: Energy Brokers and Energy Consultants shall:
   i. Not engage in misleading or deceptive conduct as defined by State or federal law, or by Commission rule, regulation, or Order;
   ii. Not make false or misleading representations including misrepresenting rates or savings of certain energy products and services;
   iii. Provide the customer with written information, upon request, or with a website address at which information can be obtained, if the customer requests such information via the internet;
   iv. Use reasonable efforts to provide accurate and timely information about services and products. Such information will include information about rates, contract terms, early termination fees, and right of cancellation consistent with this Section, UBP Section 2, and any other relevant Section;
   v. Ensure that any product or service offerings marketed by an Energy Broker or Energy Consultant contain information written in plain language that is designed to be understood by the customer. This shall include providing any written information to the customer in a language in which the Energy Broker or Energy Consultant has substantive discussions with the customer or in which a contract is negotiated;
   vi. Investigate customer inquiries and complaints concerning marketing practices within five days of receipt of the complaint; and,
   vii. Cooperate with the Department and Commission regarding marketing practices proscribed by the UBP and with local law enforcement in investigations concerning deceptive marketing practices.

e. Dispute Resolution: Energy Brokers and Energy Consultants shall maintain an internal process for handling customer complaints and resolving disputes arising from marketing activities and shall respond promptly to complaints forwarded by the Department.

2. Disclosure of compensation

a. Energy Brokers and Energy Consultants shall disclose to customers the form and amount of compensation via a conspicuous statement on any contract or agreement between the energy agent, consultant, broker, or intermediary and its customer.

b. All such disclosures shall include any dollar amount paid, the form in which the compensation was given to the Energy Broker or Energy Consultant, the entity which made the payment, and any broker fee or margin which was added to the energy product or service the customer enrolled in. This disclosure must include anything of value that was given as compensation to the Energy Broker or Energy Consultant for their work, including commissions, bonuses, and any non-financial compensation.
c. In instances where the Energy Broker or Energy Consultant has a direct contractual relationship with the customer, this disclosure shall be included on the first page of the customer agreement, must be in plain language, and appear in 12-point font size or larger.
d. In instances where the Energy Broker or Energy Consultant does not have a direct contractual relationship with the customer, an Energy Broker or Energy Consultant shall disclose to the customer in a separate, written communication any fee splitting arrangement, including the third party receiving the fee and the amount or percentage of fee that the third party will receive.
e. If a third party, such as an ESCO or DERS, collects compensation on behalf of the Energy Broker or Energy Consultant or provides compensation to the Energy Broker or Energy Consultant, such compensation shall be added to the Customer Disclosure Statement in the third party's customer agreement and reflect the amount and method. In this instance, the Energy Broker or Energy Consultant shall still disclose this information at the time of marketing to the customer.

3. Prohibition on Rebates
a. No Energy Broker, Energy Consultant or any other person acting for or on behalf of the Energy Broker or Energy Consultant shall offer or make, directly or indirectly, any rebate of any portion of the fee, premium or charge made, or pay or give to any applicant, or to any person, firm, or corporation acting as agent, representative, attorney, or employee of the energy rate payer or any interest therein, either directly or indirectly, any commission, any part of its fees or charges, or any other consideration or valuable thing, as an inducement for, or as compensation for, any energy supply or energy-related business.
i. An applicant; any person, firm, or corporation acting as agent, representative, attorney, or employee of the energy rate payer or of the

prospective energy rate payer; or anyone having any interest in the real property shall not knowingly receive, directly or indirectly, any such rebate or other consideration or valuable thing.

ii. Any person or entity who violates these prohibitions is subject to a penalty equal to the greater of $5,000 or up to ten times the amount of compensation or rebate received or paid.

F. Customer Inquires

1. This sub-section establishes requirements for responses by an Energy Broker or Energy Consultant to retail access customer inquiries. An Energy Broker or Energy Consultant shall respond to customer inquiries sent by means of electronic mail, telecommunication services, mail, or in meetings. The subjects raised in inquiries may result in the filing of complaints.
2. General Requirements:
   a. Energy Brokers and Energy Consultants shall provide consistent and fair treatment to customers.
   b. Energy Brokers and Energy Consultants shall maintain processes and procedures to resolve customer inquiries without undue discrimination and in an efficient manner and provide an acknowledgement or response to a customer inquiry within 2 days and, if only an acknowledgement is provided, a response within 14 days.
   c. Energy Brokers and Energy Consultants shall provide local or toll-free telephone access from the customer's service area to customer service representatives (CSRs) responsible for responding to customer inquiries and complaints. This shall either be the local or toll-free telephone number of the Energy Broker or Energy Consultant or the local or toll-free telephone number of the third-party on whose behalf of the Energy Broker or Energy Consultant is marketing.
   d. CSRs shall obtain information from the customer to access and verify the account or premises information. Once verification is made, the CSR shall determine the nature of the inquiry, and, based on this determination, decide whether the distribution utility, the ESCO, or the Energy Broker/Consultant is responsible for assisting the customer.
   e. The CSR shall follow normal procedures for responding to inquiries. If the inquiry is specific to another provider's service, the CSR shall take one of the following actions:
      i. Forward/transfer the inquiry to the responsible

party;
ii. Direct the customer to contact the responsible party; or,
iii. Contact the responsible party to resolve the matter and provide a response to the customer.

f. Energy Brokers and Energy Consultants may provide a teletypewriter (TTY) system or access to TTY number, consistent with distribution utility tariffs.

3. Specific Requests for Information
   a. An Energy Broker or Energy Consultant shall respond directly to customer inquiries for any information that is related to commodity supply and/or delivery service, to the extent it has the necessary information to respond.
   b. The entity responsible for the accuracy of meter readings shall respond to customer inquiries related to usage.
4. Emergency Contacts
   a. An emergency call means any communication from a customer concerning an emergency situation relating to the distribution system, including, but not limited to, reports of gas odor, natural disaster, downed wires, electrical contact, or fire.
   b. If contacted with an emergency telephone call, the Energy Broker or Energy Consultant CSR shall transfer emergency telephone calls directly to the distribution utility or provide the distribution utility's emergency number for direct contact to the distribution utility. If no Energy Broker or Energy Consultant CSR is available, the Energy Broker or Energy Consultant shall provide for after-hours emergency contacts, including transfer of emergency calls directly to a distribution utility or an answering machine message that includes an emergency number for direct contact to the distribution utility.

G. Customer Data
1. Energy Brokers and Energy consultants must protect against the unauthorized disclosure of confidential customer information.
2. Energy Brokers and Energy Consultants are prohibited from selling, disclosing or providing any customer information obtained from a distribution utility or from the customer themselves to others, including their affiliates, unless such sale, disclosure or provision is required to facilitate or maintain service to the customer, or is specifically authorized by the customer, or required by legal authority. If such authorization is requested from the customer, the Energy Broker and Energy Consultant shall, prior to authorization, describe to the customer the information it intends to release and the recipient of the

information.

3. NIST Cybersecurity Framework. Energy Brokers and Energy Consultants that obtain customer information from the distribution utility must have processes and procedures in place regarding cybersecurity consistent with the National Institute of Standards and Technology Cybersecurity Framework.
4. Data Security. Energy Brokers and Energy Consultants that obtain customer information from the distribution utility must comply with any data security requirements imposed by Commission rules.

H. Enforcement

1. An Energy Broker or Energy Consultant may be subject to consequences for reasons, including, but not limited to:
   a. false or misleading information in the registration package;
   b. failure to adhere to the policies and procedures described in any contract with customers;
   c. failure to comply with required customer protections;
   d. failure to comply with applicable New York Independent System Operator (NYISO) requirements, reporting requirements, or Department oversight requirements;
   e. failure to provide notice to the Department of any material changes in the information contained in the Registration Form or registration package;
   f. failure to comply with the UBP terms and conditions, including discontinuance requirements;
   g. failure to comply with the Commission's Environmental Disclosure Requirements or failure to comply with other Commission Orders, Rules, or Regulations;
   h. failure to reply to a complaint filed with the Department and referred to the Energy Broker or Energy Consultant within the timeframe established by the Department' Office of Consumer Services which is not less than five days;
   i. a material pattern of consumer complaints on matters within the Energy Broker or Energy Consultant's control;
   j. failure to comply with any federal, state, or local laws, rules, or regulations related to sales or marketing; or 'No Solicitation' signage on the premises; or
   k. failure to comply with any of the Marketing Standards set forth in Section 10 of the UBP.
2. In determining the appropriate consequence for a failure or non-compliance in one or more of the categories set forth in this Section, the Commission or Department may take into account the nature, the circumstances, including the scope of harm to individual customers, and the gravity of the failure or non- compliance, as well as the Energy Broker or

Energy Consultant's history of previous violations.

a. Enforcement Procedures:

i. The Commission or Department shall either: (a) notify the Energy Broker or Energy Consultant in writing of its failure to comply and request that the Energy Broker or Energy Consultant take appropriate corrective action or provide remedies within the directed cure period, which will be based on a reasonable amount of time given the nature of the issue to be cured; or (b) order that the Energy Broker or Energy Consultant show cause why a consequence should not be imposed.

ii. The Commission may impose the consequences listed in UBP Section H.2.b. if (a) Energy Broker or Energy Consultant fails to take corrective actions or provide remedies within the cure period; or (b) the Commission determines that the incident or incidents of non-compliance are substantiated and the consequence is appropriate.

iii. Consequences shall not be imposed until after the Energy Broker or Energy Consultant is provided notice and an opportunity to respond.

iv. Notwithstanding the requirements of sub-sections i., ii., and iii. of this paragraph, an Energy Broker or Energy Consultant is subject to immediate revocation of its registration if it fails to provide the required annual registration fee.

v. The notice of consequences imposed by the Commission will be published on the Department's website.

b. Consequences for non-compliance in one or more of the categories set forth in this Section may include one or more of the following restrictions on an Energy Broker or Energy Consultant's opportunity to do business as an Energy Broker or Energy Consultant in New York State:

i. Suspension from a specific Commission approved program in either a specific service territory or all territories in New York State;

ii. Suspension of the ability to enroll new customers in either a specific service territory or all service territories in New York State;

iii. Imposition of a requirement to record all telephonic and door-to-door marketing presentations, which shall be made available to the Department for review;

iv. Reimbursements to customers who did not receive savings promised in the Energy Broker or Energy Consultant's sales agreement/Customer Disclosure Statement or included in the Energy Broker or Energy Consultant's marketing presentation, or to customers who incurred costs as a result of the Energy Broker or Energy Consultant's failure to comply with the marketing standards set forth in UBP Section 10;

v. Release of customers from sales agreements without imposition of early termination fees;

vi. Revocation of an Energy Broker or Energy Consultant's registration and ability to operate in New York State; and,

vii. Any other measures that the Commission may deem appropriate.

c. In addition to the consequences identified at UBP Section 11.H.2.b., any person, firm, association, or corporation who or which acts in violation of Public Service Law §66-t(2), and codified in this Section, will be subject to a penalty not to exceed $5,000 for each violation.

3. An Energy Broker or Energy Consultant's registration is valid unless: the Energy Broker or Energy Consultant fails to pay its annual registration fee; the Energy Broker or Energy Consultant abandons its registration; or such registration is revoked by the Commission through a final order. Additionally, any person or entity who violates this Section's prohibitions on rebates is subject to a penalty equal to the greater of $5,000 or up to ten times the amount of compensation or rebate received or paid.

4. The Department shall maintain a list of registered Energy Brokers and Energy Consultants for the benefit of third parties who do business with such Energy Brokers and Energy Consultants. As stated in UBP Section 2B, DER suppliers are prohibited from doing business with unregistered Energy Brokers and Energy Consultants.

[19] http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=15-M-0180&submit=Search+by+Case+Number