

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 15-M-0180 - In the Matter of Regulation and Oversight of
Distributed Energy Resource Providers and
Products

SUPPLEMENTAL STAFF WHITEPAPER ON DER OVERSIGHT

April 11, 2017

INTRODUCTION

The Reforming the Energy Vision (REV) initiative, in Case 14-M-0101 and related dockets,¹ is creating new markets for energy services beyond energy commodity, and is increasing the opportunities for consumers to manage their energy usage and bills, facilitate wider market-based deployment of clean energy, and increase the benefits of retail competition.² In the Framework Order, the Commission recognized that, as new markets and programs are created and consumers have increased opportunities to participate, oversight of those markets and programs, and participants in them, is necessary to ensure both consumer protection and fair competition.³ Detailed rules already exist regarding the Commission supervision of providers of commodity service, known as Energy Services Companies (ESCOs).⁴ Commission supervision in the non-commodity markets will ensure that consumers and service providers can participate with confidence in markets created by

¹ Case 14-M-0101, Reforming the Energy Vision, Order Instituting Proceeding (issued April 25, 2014).

² Case 14-M-0101, supra, Order Adopting Regulatory Policy Framework and Implementation Plan (issued February 26, 2015) (Framework Order).

³ Framework Order at 102.

⁴ An ESCO is an entity eligible to sell electricity and/or natural gas to end-use customers using the transmission or distribution system of a utility; Case 98-M-1343, Uniform Business Practices (UBP), Section 1. The Commission is currently undergoing an evidentiary hearing to evaluate the ESCO market and develop any necessary changes; see Case 15-M-0127 et at., ESCO Eligibility, Notice of Evidentiary and Collaborative Tracks and Deadline for Initial Testimony and Exhibits (issued December 2, 2016).

Commission Order and managed by a distributed system platform provider (DSP) which the Commission regulates. The Commission also has responsibility to ensure that Distributed Energy Resource Suppliers (DERS) provide promised resources, especially as these resources become more prevalent and embedded into system planning and operations. In addition, the Commission has the responsibility to ensure that utility service continues to be safe and reliable.

In this Whitepaper, Staff proposes an updated model for DER Oversight, which include requirements applicable to the relationship between DERS and their end-user customers, as well as requirements applicable to the relationship between DERS and DSPs and proposes the draft Uniform Business Practices for DERS (UBP-DERS). This Whitepaper focuses on certain aspects of the original Staff Proposal and solicits additional comments on both that Proposal and this Whitepaper. These requirements are part of a framework of regulation and contractual agreements, including interconnection agreements and tariffs, which will govern the minimum eligibility requirements, as well as the rights and responsibilities of DERS.

It is expected that separate operating agreements between DERS and utilities/DSPs will be required to address more detailed requirements, similar to the Business Service Agreements now in place between ESCOs and utilities. This Whitepaper focuses on ensuring appropriate consumer and market protections while also establishing a basic framework for transactions between DSPs and DERS. This Whitepaper also addresses issues related to the implementation and mechanics of oversight, including the

procedures to be used to ensure timely and effective enforcement of Commission requirements.

BACKGROUND

In the Framework Order, Staff of the Department of Public Service (Staff) was directed to develop proposed rules for oversight of DERS in consultation with stakeholders. Further, Staff was to devise a dispute resolution mechanism that expedites review and action on disputes between DERS and utilities.¹

Staff reviewed the UBP applicable to ESCOs to determine the extent to which those requirements should be applied to DERS. Staff developed an outline of proposed requirements for DERS, as well as detailed questions requiring stakeholder consideration, and discussed those issues at a Technical Conference on May 12, 2015. DERS, ESCOs, utilities, and consumer representatives actively participated in that conference. After taking that input into consideration, Staff issued a proposal for public comment on July 28, 2015, including specific requirements documented in the proposed UBP-DERS.² Staff led a technical conference on that proposal on August 20, 2015, in which DERS, ESCOs, utilities, and consumer representatives participated. Comments on the Staff Proposal were received from 24 stakeholders.

In its Order on Net Energy Metering Transition, Phase One of Value of Distributed Energy Resources, and

¹ Framework Order at 52, 105.

² Case 15-M-0180, Regulation and Oversight of Distributed Energy Resource Providers and Products, Staff Proposal, July 28, 2015 (Staff Proposal).

Related Matters, the Commission directed Staff to file an updated whitepaper on DER oversight for public comment so that the Commission will be able to consider the DER oversight provisions at the same time as it acts on the implementation issues in the Value of DER proceeding.¹ In response to that directive, and given both the length of time that has passed since the technical conference and the filing of comments as well as the continuing evolution of REV and DER markets, Staff submits this Whitepaper in order to capture recent developments and receive stakeholder input on the appropriate standards for DER Oversight. In developing this Whitepaper, Staff considered both the comments received on the Staff Proposal and new developments in DER and REV markets. Comments are invited on this Whitepaper, the UBP-DERS, a copy which is attached as Appendix A, and the original Staff Proposal, a copy of which is attached as Appendix B.

Framework and Applicability

A. General Applicability

Supervision over DERS will be necessary to ensure both consumer protection and fair competition. Ensuring that all consumers and service providers can participate with confidence in markets created by the Commission is essential to developing and promoting new markets for DER. The Framework Order concluded that DERS should be subjected

¹ Case 15-E-0751, In the Matter of the Value of Distributed Energy Resources, Order on Net Energy Metering Transition, Phase One of Value of Distributed Energy Resources, and Related Matters (issued March 9, 2017) (VDER Order).

to Commission oversight. This Whitepaper is based on this foundation. However, this Whitepaper proposes one significant change with respect to the direction taken in the Framework Order. As discussed more fully below, Staff proposes removing the self-imposed limitation on DER oversight described in the Framework Order which held that the Commission will only exercise oversight when: (1) providers acquire customer data by any means established under the Commission's authority, and (2) when DER services are sold into the DSP markets.¹

This Whitepaper recommends the expansion of oversight to all DERS that participate in Commission-authorized and/or utility or DSP-operated programs or markets, including those which meet the standards described in the Framework Order and discussed above. The development of REV and related proceedings have made it clear that the activities of DERS will be broad and varied. DERS that build or manage Community Distributed Generation (CDG) projects, participate in Community Choice Aggregation (CCA) programs, develop projects that receive compensation under the VDER tariff, or contribute to demonstration projects or Non-Wires Alternatives (NWAs) are all interacting with DSPs, the grid, customers, and markets in ways that make oversight appropriate and necessary, regardless of whether each program technically constitutes a "DSP market" or involves the acquisition of customer data in a way that would meet the Framework Order standards.

In addition, eliminating this distinction will help obviate customer and DERS confusion regarding what DER

¹ Framework Order at 105.

products and services are subject to Commission oversight. The analysis set forth in the Framework Order does not wholly match recent developments of DER markets programs, such that a customer who purchases a DER product or service would be unlikely to know whether that product or service meets either of the two criteria presented in the Framework Order and discussed above. This could particularly cause confusion regarding the customer's ability to contact the Office of Consumer Services to resolve disputes with DERS. Expanding DER oversight to cover all DERS that participate in Commission-authorized and/or utility or DSP-operated programs or markets will enable customers and DERS to more easily understand what products and services are covered.

B. Community Distributed Generation Programs

With respect to CDG programs, recently issued Orders further clarify the circumstances under which oversight will be triggered. A sponsor of a CDG project - that is, the entity or entities responsible for building the generation facility, owning, and operating it in conformance with the PSL and Commission orders, coordinating the project's operation with the utility, and managing the relationship between members and the project - will be a DERS subject to Commission oversight and will be required to abide by the standards to be developed in this proceeding.¹ As discussed in the Commission's Order Granting Reconsideration In Part, self-certification of requirements would be applicable to CDG sponsors at least

¹ Case 15-E-0082, supra, Order Establishing a Community Distributed Generation Program and Making Other Findings (issued July 17, 2015) (CDG Order).

in the transitional, or bridge, period until an Order is issued in this proceeding.¹

The Commission concluded that CDG sponsors are DERS, and subject to the standards established herein. The CDG Order directed utilities to establish uniform formats and procedures for providing customer data, including billing and usage information, to sponsors of CDG projects for purposes of soliciting participation in a CDG project. Those operating procedures are filed in Case 15-E-0082 and are currently in effect, but will be subject to modification upon Commission adoption of any DER Oversight rules in this proceeding. Staff proposes that CDG sponsors be subject to the UBP-DERS for the scope and duration of the CDG project, including all products and services they offer to members of that project.

C. Community Choice Aggregation

Staff believes that it is not necessary to apply the UBP-DERS to ESCOs participating in a CCA program. An ESCO that provides supply service to residents as part of a CCA program would be subject to the ESCO UBP and would be regulated by the Commission under those rules. The UBP provides more specific oversight for ESCOs, which provide essential commodity service.

On the other hand and consistent with the CCA Framework Order, CCA programs may include partnerships with DERS, not just ESCOs. Currently, where a CCA partners or enters into contract with a non-ESCO DERS, that DERS would not be subject to the UBP. Staff now proposes that the DERS in such a circumstance would be required to comply

¹ Case 15-E-0082, supra, Order Granting Reconsideration In Part (issued October 16, 2015).

with the UBP-DERS. The UBP-DERS standards should also apply if a DERS is acquiring customer data within a CCA.

With respect to the municipality itself, the CCA Order established oversight criteria for municipalities and CCA Administrators. Thus, Staff proposes that municipalities and contractors or other third parties supporting the municipalities in performing the CCA Administrator role in a CCA program should be exempt from the requirements of the UBP-DERS and will instead follow the filing and reporting requirements detailed in the CCA Order. Staff believes this exemption is appropriate because the CCA Order already established necessary consumer protections specific to CCA projects and will allow CCA administrators the flexibility to develop projects.

D. Non-Wires Alternatives

Staff proposed that the UBP-DERS be applicable to entities providing load relief or other DER services as part of utility NWA projects, such as participants in the Brooklyn/Queens Demand Management Program.¹ Under the Staff Proposal, those entities would be subject to the UBP-DERS for DER products and services that are part of those projects. The purchase and sale of callable and/or permanent load reductions as part of utility NWA programs is a market that the Commission has created.² Those

¹ Case 14-E-0302, Consolidated Edison Company of New York, Inc., Order Establishing Brooklyn/Queens Demand Management Program (issued December 12, 2014).

² The Framework Order directed utilities to file NWA proposals and the DSIP Guidance Order required the utilities to identify beneficial locations for DER on their systems.

resources will be relied upon by the utility and integrated into the planning and operations of the utility system. For these reasons Staff continues to believe that entities selling DER should be subject to both the business-to-consumer - to the extent the DERS interacts with customers - and business-to-business requirements of the UBP-DERS, for the products and services that are the subject of the NWA procurement within the NWA project's specified geographic location.

Some NWA procurements are now being made through bi-lateral contracts. The specific terms of those contracts will not be mandated to ensure that development and procurement of innovative products, services, and business arrangements is not impeded. However, oversight of those contracts is required to ensure that such agreements are non-discriminatory and in the public interest. Therefore, Staff proposes that contracts between DERS and the utility/DSP must conform with these objectives and these contracts be made available to Staff upon request for review.¹

E. Demand Response Programs

Staff proposes that the UBP-DERS be applicable to entities selling demand response resources pursuant to distribution utility Dynamic Load Management (DLM) tariffs, including demand response providers, aggregators, and ESCOs. In requiring all electric distribution utilities to develop DLM programs, the Commission stated that these programs represent a major step toward enabling two-way transactive markets for energy and capacity on the

¹ Trade secret protection may be requested to the extent appropriate.

distribution system between customers and their utility or DSP.¹ Because the Commission is creating these markets and utilities will rely on these resources and integrate them into utility planning and operations, Staff proposes that entities selling DLM resources to utilities, including aggregators and ESCOs, be subject to both the business-to-consumer and business-to-business requirements of the UBP-DERS, for the relevant products and services.

F. Energy Efficiency

Staff proposes that EE DERS who obtain customer data through means established under the Commission's authority, or who sell these products and services into the DSP markets will be subject to the UBP-DERS. One specific application arises in the case of EE DERS selling permanent load reductions as part of utility NWA programs, which will be subject to the UBP-DERS.

However, there may be some EE DERS that do not obtain customer data through means established under the Commission's authority, or sell these products and services into the DSP markets. This creates a potential situation where some EE providers are subject to the Commission's oversight while others are not. Of particular concern is the potential for customer confusion. Therefore, Staff requests comments in particular on the application of the UBP-DERS to EE providers.

G. Utility and NYSERDA Contractors

Staff proposes that the UBP-DERS should be applicable uniformly in all instances in which Commission

¹ Case 14-E-0423, et al., Dynamic Load Management Programs, Order Adopting Dynamic Load Management Filings With Modifications (issued June 18, 2015).

oversight is triggered, irrespective of whether or not the entity is a contractor of the utility or New York Energy Research and Development Authority (NYSERDA), including for energy efficiency programs. Status as a contractor of NYSERDA or a utility neither triggers nor obviates applicability of the relevant requirements.

H. Net Metering & Value of DER

In the comments submitted in response to the Staff Proposal, several parties requested clarification as to whether entities selling DER products and services that participate in net energy metering (NEM), including remote net energy metering (RNM), are also subject to the Commission's oversight, based on their belief that NEM is a DSP-like market. This Whitepaper clarifies that DERS developing projects or providing services related to NEM, including Phase One NEM, will be subject to DER oversight. New projects receiving compensation under a VDER Value Stack tariff will also be subject to the UBP-DERS. The Commission emphasized in the VDER Order that DER participation should be coupled with strong consumer protections and thus directed that this Whitepaper and the UBP-DERS be developed and adopted in parallel with the implementation of the VDER Order.

I. REV Demonstration Projects

With respect to REV demonstration projects and in order to provide clarity and to allow existing demonstration projects to develop, Staff proposes that REV Demonstration projects that are approved prior to the adoption of the UBP-DERS by the Commission will not be subject to those rules. However, if a project is continued and scaled beyond the original demonstration period, DERS

participating in those projects should have to comply with the UBP-DERS. Additionally, DERS participating in demonstration projects approved after the effective date of the UBP-DERS should also be subject to those rules.

J. Future Applicability

These regulations and requirements are designed to be sufficiently generic such that they can be applied not only to those programs and markets currently in existence but also to the new and innovative programs and markets that will be developed both by the Commission and through market and DSP innovation. Any need for amendments or updates to the UBP-DERS or other DER oversight provisions should be addressed when those programs or markets are created.

K. Distinguishing DERS and ESCO Oversight

The practices and standards which Staff proposes to be applicable to DERS are contained in the UBP-DERS, which are modeled on the UBP applicable to ESCOs. While some parties, argued that the proposed UBP-DERS be merged with the UBP applicable to ESCOs, and a single document be created, Staff proposes that these requirements be maintained in separate documents for the time being. Separate documents at this time will be useful in avoiding confusion, particularly among ESCOs who are familiar with the UBP. A single document containing the practices and standards applicable to ESCOs and DERS will be most useful in the future, as development of nascent DER markets continues. Staff proposes that a consolidated UBP be developed immediately following adoption by the Commission of any DER Oversight requirements.

With respect to marketing requirements, the UBP contains detailed, and in some cases prescriptive, marketing rules and requirements reflecting the Commission's long history of experience and concern with certain ESCOs marketing practices that have caused customer confusion. Conversely, as originally proposed, the rules to be applicable to DERS were generally not as detailed and prescriptive as the UBP applicable to ESCOs, although they articulated the Commission's authority to take prompt action in response to, among other things, misleading or deceptive marketing. Several parties commented however that, to effectively prevent customer abuses, the Commission should instead establish more prescriptive oversight over DERS marketing practices at the onset. In light of the experience with the retail market and party comments Staff proposes a more prescriptive approach to oversight of DERS marketing practices including, among other things, oversight over DERS' training of marketing representatives and specific requirements what contacting customers via door-to-door and telephonic marketing. These changes are reflected in Section 4 of the proposed UBP-DERS.

Business-to-Consumer Issues

A. Directly Imposing Requirements for Consumer Protections

Some parties suggest that consumer protections should be addressed through contracts between the DSP and DERS, with standards established by the Commission, rather than through direct Commission oversight of DERS. However, Staff believes that approach does not appropriately reflect

the need to ensure that markets which the Commission is creating are developing and functioning in a manner consistent with the public interest. Furthermore, including protections for users of DER products and services in contracts between the DSP and DERS would place the DSP in the position of enforcing those requirements. Staff does not believe that the DSP should be charged with ensuring consumer protections for products provided by unaffiliated entities. That function is a responsibility of the Commission, which can be implemented through direct oversight of DERS through consumer protections established in the UBP-DERS. The proposal of a UBP-DERS established and enforced by the Commission is also consistent with the approach taken in overseeing ESCOs.

B. Application Requirements

The Staff Proposal recommended that entities seeking to participate in DSP, and similar markets as defined above, be required to submit an application and obtain a finding of eligibility. This application would include information such as company name and contact information, a list of criminal or regulatory sanctions imposed in the last two years against the entity, its affiliates, or its employees in New York and throughout the US, a list of current investigations being conducted by law enforcement or regulatory agencies in New York and throughout the US, information regarding security breaches associated with customer-specific information in New York and throughout the US, as well as a list of products and services to be offered and sample sales agreements. Requiring entities to apply to participate in REV or similar markets, coupled with Staff's review, can help

ensure that potential market participants are aware of applicable requirements and that they have the capability of following those requirements. Staff believes that application requirements should be concise, limited to information that is required by Staff to perform an appropriate review, and should not be burdensome to market participants.

The proposed applications requirements are clarified and modified as follows. With respect to the requirement that DERS identify criminal or regulatory sanctions in the application, Staff clarifies that this proposal should be limited to officers, directors, and those employees interacting directly with customers instead of applicable to any employee, as this reporting requirement is meant to provide information of individuals who have the ability to control or impact the operations of the DERS and interact with customers. Staff believes that collecting criminal information on every employee would be unnecessary. Therefore, Staff proposes that applicants need only provide information regarding criminal or regulatory sanctions imposed in the last 24 months against the DERS, any officers or directors of the DERS, any entities holding ownership interests of 10% or more in the DERS, or any employees interacting directly with customers.

Additionally, with respect to the requirement that a DERS update changes to the personnel identified to Staff as responsible for resolving consumer complaints, Staff clarifies that this identification requirement is applicable to whomever the DERS identifies in its

application as the point of contact for such complaints, whether or not that individual is a supervisor.

Finally, Staff is also considering whether or not a performance bond or other security requirement should be imposed as part of a DERS application process. Staff thus requests comments on the following issues: (1) the appropriateness of a performance bond; (2) the form such a bond should take and how it should be assessed; (3) the amount of any performance bond for a particular DER; and (4) the criteria under which the performance bond would be drawn upon.

C. Process for review and approval of applications

The elements of the Staff Proposal regarding review and approval or denial of applications for eligibility to operate as a DERS are not modified. Staff proposes that the list of approved DERS be maintained on the Commission's website, which utilities can use to identify DERS that have the Commission's authorization to participate in markets the Commission oversees.

D. Marketing

The Staff Proposal provided for marketing standards to be applied to DERS which were, for the most part, general requirements, in contrast to the detailed requirements for door-to-door marketing and third-party verification that are applicable to ESCOs. However, the Staff Proposal provided that to the extent forecasts of utility prices are used in marketing materials, the forecasts should reflect a multi-year average of actual historical prices or energy prices recently forecast by the applicable utility. Such a requirement is necessary to address concerns that DERs could inflate estimates of

anticipated customer savings in marketing materials. This proposal is refined as follows based on comments from stakeholders.

Staff proposes that if marketing materials and/or sales agreements for DER products and/or services contain an estimate of future utility supply charges, the estimates of future utility supply charges must be calculated based on actual utility supply charges over at least the past twelve months, as well as those actual utility supply charges plus and minus five percent. Actual utility data for the past twelve months must be used, and may be augmented with actual data for a longer period of time at the DERS' discretion. Staff believes that requiring that current and recent utility supply charges be used as a standard point of comparison is reasonable, can be readily implemented, and will assist consumers in assessing the savings that can be expected from DER purchases.

E. Standard Contract Terms

The Staff proposal called for the development of standard contract terms for retail DER products and services that could assist consumers in readily understanding and comparing such contracts for those products and services. Staff recognizes that there are substantial differences among different types of DER products and services, and there is a need for those differences to be reflected in contracts. Several commenters explain that customer disclosure statements could be designed for different types of DER products, for the benefit of consumers shopping for those products, just as a Customer Disclosure Statement has been a valuable tool to enhance consumer understanding of ESCO retail energy

products. To avoid interfering with the development of innovative energy products and services, rather than attempting to create a standard disclosure statement for each individual product or service, a list of points that must be addressed in a disclosure statement should be developed, as well as requirements regarding the form of disclosure statements and their provision to customers. Staff invites comments on the disclosure statement term that should be included in all DER contracts generally, as well as those that should be included in specific types of DERS.

To further the understanding of DER customers about the Commission's consumer protections, Staff proposes that the disclosure statements to be developed for products and services subject to the Commission's oversight should include an explanation that the product or service is subject to the Commission's oversight. These statements should also include information regarding customers' HEFPA rights and protections, as well as information regarding dispute resolution and contacting the Department's call center for assistance.

F. Commission-Imposed Consequences for Non-Compliance

Accordingly, the Staff Proposal identified the conditions under which consequences for non-compliance may be imposed, as well as the procedures to be used to ensure due process. Staff also proposed that entities violating specific rules be allowed to take advantage of a cure period for taking action to obviate future violations of the same nature. A cure period, however, would not be applicable to DERS that have had multiple failures in a three-year period and for egregious acts, including a

security breach affecting the customer-specific information of all or most customers. However, considering recent development with respect to Commission oversight of the retail market, Staff modifies this proposal as follows to match the process currently in place for ESCOs.

Staff proposes that upon evidence of a single violation of the UBP-DERS, the Commission may proceed directly with an Order to Show Cause for revocation of a DERS' eligibility to sell products in DSP markets and permission to acquire customer data through means established by the Commission, or any less severe action it determines appropriate. Staff believes that this approach satisfies all applicable due process requirements and will facilitate timely and forceful Commission action against entities which violate the UBP-DERS, thereby better protecting consumers and facilitating market development.

Business-to-Business Issues

A. Cyber Security

In their comments, the Joint Utilities (JU) propose that the UBP-DERS include provisions to address cyber security concerns, including that all DERS and ESCOs must have processes and procedures in place related to cyber security. It states that most of the details regarding protections and breach protocols will be addressed in DERS/Utility agreements, and that the UBP-DERS should specify the content of these agreements, including: requirements that DERS conduct reviews of adherence to cyber security policies at least annually; and terms for notifying the DSP and Commission immediately in event of a breach. No party opposed this recommendation. Given that DERS activities may have an impact on the integrity of the

electric system, particularly as DERS obtain system information from the DSP and utilities rely on DERS for reliability purposes, Staff proposes that the UPB-DERS require DERS selling in DSP markets to have the described processes and procedures.

B. Dispute Resolution

The Staff Proposal offered a standard process for resolving disputes between DSPs and DERS that cannot be resolved through utilities' existing complaint resolution procedures. Based on stakeholder comments, Staff now further proposes that all non-emergency complaints commence with the informal procedures. Additionally, Staff proposes the following definition - "a written document submitted to DPS Staff and the opposing party in conformance with Section 7 of the UPB-DERS to initiate the process of resolving a dispute between a DERS and a DSP." Furthermore, Staff proposes that certain meetings may be conducted using video conferencing and other modern technology, rather than face-to-face meetings.

APPENDIX A

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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

April 2017

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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:

Customer inquiry - A question or request for information from a customer relating to a rate, term, or condition of service provided by a DERS, distribution utility, DERS, or other service provider.

Customer Service Representative (CSR) - An employee or agent of the DERS responsible for responding to customer inquiries and complaints.

Digital Marketplace - A Digital Marketplace is a web-based platform providing consumers and vendors opportunity to transact simply and with confidence. Consumers are provided information that enables them to easily locate products and services of interest and to compare and contrast providers. Vendors are able to efficiently access consumers at low cost and provide tailored service offerings.

Distributed Energy Resources (DER) - A broad category of resources including end-use energy efficiency, demand response, distributed storage, and distributed generation. DER will principally be located on customer premises, but may also be located on distribution system facilities.

Distributed Energy Resources Supplier (DERS) - A supplier of one or more DERs. Suppliers may choose to provide DERs as stand-alone products or services, or may choose to bundle them with energy commodity. Entities which sell both DER and energy commodity are both DERS and ESCOs.

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 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 MDSP 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: www.dps.ny.gov/98m0667.htm.

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.

DERs marketing representative - An entity that is either the DERs or a contractor/vendor conducting, on behalf of the DERs, any marketing activity that is designed to enroll customers with the DERs.

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

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.

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

Meter - A device for determination of 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.

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

Plain Language - Written in clear and coherent manner using words with common and everyday meaning and avoiding legal or energy industry terms, acronyms and abbreviations that a person of ordinary intelligence would not be expected to understand. If use of a technical term is necessary, the term is clearly defined in the portion of the text where it is used.

Residential customer - An individual or occupant of a residential premise as defined in 16 NYCRR Part 11.2(a) (2).

Sales agreement - An agreement between a customer and an DERS that contains the terms and conditions governing the provision of products and services by a DERS. 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 DERS for the products and services specified.

Termination Fee - An amount specified in a DERS sales agreement where such agreement permits the DERS to assess and collect a charge in such amount to a customer who terminates the agreement before the end of a 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, June 18, 2015.

SECTION 2: ELIGIBILITY REQUIREMENTS

- A. Applicability. This Section sets forth the process that a DERS is required to follow for a Department of Public Service (the Department) finding of eligibility to acquire customer data by any means established under the Commission's authority and/or to sell DER into DSP markets, and that an entity is required to follow to maintain eligibility.
- B. Application Requirements
1. Applicants seeking eligibility to become a DERS are required to submit to the Department an application package containing the following information and attachments:
 - a. A completed DERS Eligibility Form, available on the Department website: www.dps.ny.gov
 - b. Proof of registration with the New York State Department of State;
 - c. Proof of payment to DSP for application fee, EDI testing, or other services required by the DSP, if any;
 - d. Name, postal and e-mail addresses, and telephone and fax numbers for the applicant's main office;
 - e. Names and addresses of any entities that hold ownership interests of 10% or more in the DERS, including a contact name for corporate entities and partnerships;
 - f. Detailed explanation of any criminal or regulatory sanctions imposed during the previous 24 months against the DERS, any senior officers of the DERS, or any entities holding ownership interests of 10% or more in the DERS;
 - g. Disclosure of any decisions or pending escalated regulatory actions in other states that affect the DERS' ability to operate, such as suspension, revocation, or limitation of operating authority;
 - h. A list and description of current investigations being conducted by law enforcement or regulatory entities.
 - i. A summary of Applicant's history of bankruptcy, dissolution, merger, or acquisition in the 24 months immediately preceding the date of application;
 - j. Detailed explanation regarding ongoing investigations by the US Securities and Exchange

Commission, the US Department of Justice, or the US Federal Energy Regulatory Commission;

- k. A completed Service Provider Contact Form, which can be found on the Department's website <http://www.dps.ny.gov/ocs.html>, identifying the DERS' employee(s) responsible for resolving consumer complaints received by the Department;
 - l. A list of DER products or services offered that are to be included on the Digital Marketplace or any tools established under the Commission's authority, and the customer classifications (i.e., residential, small/mid-sized non-residential) to whom they will be offered;
 - m. A list of DER products or services that are to be sold into DSP markets;
 - n. Sample sales agreements for each customer class for the DER products or services to be included on the Digital Marketplace or other tools established under the Commission's authority; and
 - o. 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.
- 2. Applicants shall attest to compliance with procedures, protocols and practices required to exchange information with the DSP, as required by the Commission. The Department shall maintain a list of DERS which successfully complete these requirements.
 - 3. A DERS that knowingly makes false statements in its application package is subject to denial or revocation of eligibility.
 - 4. If the application 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 application package as required for each applicant. A DERS shall notify the Department of any major changes in the information submitted in the DERS Eligibility Form and/or application package that occurs during the Department

review process. The Department shall advise the applicant, in writing, if the application submitted has been approved.

2. The following procedures are applicable to applications which the Department recommends denial:
 - a. The Department shall notify the Applicant in writing of the reason(s) why Staff recommends denial of the application;
 - b. The Applicant may address the concern(s) identified by the Department through a supplemental application;
 - c. The Department will notify the Applicant in writing if the supplemental application has been approved, or if denial is recommended. If Staff continues to recommend denial of the application, the Department shall notify the Applicant in writing of the reason(s) for that recommendation, and shall refer the matter to the Commission for its consideration. The Applicant will have the opportunity to present information to the Commission in support of its application.

D. Maintaining DERS Eligibility Status

1. A DERS shall submit by April 1 each year (April 1 Statement):
 - a. a statement that the information and attachments in its DERS Eligibility Form and application package are current; or
 - b. a description of revisions to the DERS Eligibility Form and application package and a copy of the revised portions or, at the DERS' option, a copy of the revised portions identifying the revisions by highlighting or other means.
2. A DERS shall update all the information it submitted in its original application package to the Department every three years, starting from the date of its eligibility letter, consistent with the requirements of UBP-DERS Section 2.B. A DERS' status as an eligible provider is continuous from the date of the Department eligibility letter, unless revoked or otherwise limited in accordance with UBP-DERS Section 2.D.5. If the three year anniversary date falls within one month of April 1, the DERS shall resubmit its application package in lieu of the April 1 statement.
3. A DERS shall submit at other times during the year:

- a. A description of any revision in the terms and conditions applicable to the business relationship between the DERS and its customers, including provisions governing the process for termination of sales agreements. For any such revisions, the DERS shall provide a copy of the revised portions or, at the DERS' option, a copy of the revised portions identifying the revisions by highlighting or other means.
 - 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 DERS to meet its financial obligations.
 - c. Changes in the DERS' business and customer service information provided in the application.
 - d. To the extent required, post prices for DER products on the Digital Marketplace or any tool established under the Commission's authority. Each DERS must guarantee to charge new customers no more than the price of the DERS' posted offers at the time of the customer's agreement for each product.
 - e. Changes in personnel responsible for resolving consumer complaints received by the Department and referred to the DERS.
4. A DERS may be subject to the consequences listed in UBP-DERS Section 2.D.5.b for reasons, including, but not limited to:
- a. false or misleading information in the application package;
 - b. failure to adhere to the policies and procedures described in its Sales Agreement;
 - c. failure to comply with required customer protections;
 - d. failure to comply with reporting requirements, or Department oversight requirements;
 - e. failure to provide notice to the Department of any material changes in the information contained in the DERS Eligibility Form or application package;
 - f. failure to comply with the terms and conditions of these standards, including discontinuance requirements;

- g. failure to comply with procedures, protocols or practices for communicating with DSPs as required by the Commission;
 - h. failure to comply with other Commission Orders, Rules or Regulations;
 - i. failure to reply to a complaint filed with the Department and referred to the DERS within five days;
 - j. a material pattern of consumer complaints on matters within the DERS' control;
 - k. any of the reasons stated in Section 8; or
 - l. failure to comply with any of the Marketing Standards set forth in Section 4.
5. In determining the appropriate consequence for a failure or non-compliance in one or more of the categories set forth in UBP-DERS Section 2.D.4, 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 DERS' history of previous violations.
- a. The Commission or Department shall:
 - 1. Notify the DERS in writing of its failure to comply and request that the DERS 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.
 - 2. A cure period need not be provided in situations in which the DERS has had multiple failures or non-compliance of one or more categories identified in UBP-DERS Section 2.D.4 within a three-year period, and/or the DERS has committed egregious acts, including a security breach affecting customer-specific information of all or most customers.
 - 3. Upon failure of the DERS to take corrective actions or provide remedies within the cure period, the Commission may impose the consequences listed in subparagraph b of this paragraph.
 - 4. Consequences shall not be imposed until after the DERS is provided notice and an opportunity to respond.

5. 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 UBP-DERS Section 2.D.4 may include one or more of the following restrictions on a DERS's ability to sell services into DSP markets and/or acquire customer data by means established by the Commission:
 1. Suspension from selling products or services to a specific DSP or to all DSPs in New York State;
 2. 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;
 3. Imposition of requirements to modify procedures to obtain customer authorization for purchase, and to verify such customer authorization;
 4. Imposition of requirements to modify procedures regarding the protection of consumer information;
 5. 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;
 6. Revocation of a DERS' eligibility to sell services into DSP markets and/or acquire customer data by means established by the Commission; and
 7. Any other measures that the Commission may deem appropriate.
- c. Consequences imposed pursuant to this paragraph shall continue to apply until the DERS' failure to comply with these standards has been cured or the Commission or Department has determined that no further cure is necessary.
6. A DERS' eligibility to sell DER services into DSP markets and/or acquire data by any means established under the Commission's authority, is valid unless: the DERS abandons its eligibility status; or such status is revoked by the Commission through a final order pursuant to UBP-DERS Section 2.D.5.

7. The Department shall notify DSPs upon notice to the DERS, of any determination to revoke a DERS' eligibility to sell DER into DSP markets and/or acquire data by any means established under the Commission's authority.

SECTION 3: CUSTOMER INFORMATION

- A. Applicability. This Section establishes practices for release and protection of customer information by DSPs to DERS through the Digital Marketplace or other means authorized by the Commission. It also identifies the content of information sets transmitted using EDI standards. The DSP and a DERS shall use standards, systems, and protocols developed for these purposes for transmittal of customer information.
- B. Customer Authorization Process. The DSP shall provide information about a specific customer requested by a DERS authorized by the customer to receive the information.
1. DERS and DSPs shall abide by rules regarding release, content, and protection of customer information that are established as part of Commission Orders approving creation of a Digital Marketplace or other tools.
 2. DERS requesting customer information through means other than the Digital Marketplace or other tools authorized by the Commission, shall inform the consumer 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 unless the sales agreement provides for a longer time.
 3. A DSP shall assume that a DERS obtained proper customer authorization if the DERS is authorized to provide service and submits a valid information request.
 4. A DERS 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 DERS, 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 DERS.
 5. Upon request of a customer, a DSP shall block access by DERS to information about the customer.
 6. A DERS 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 DERS

1. Release of Information. A DSP shall respond to valid requests for information as established in standards, systems, or protocols developed. The DSP shall provide the reason for rejection of any valid information request.
2. Customer Contact Information Set. The DSP, to the extent it possesses the information, shall provide, upon a DERS request, consumption history for an electric account and consumption history and/or¹ a gas profile for a gas account.
 - a. Consumption history² for an electric account shall include:
 1. Customer's service address;
 2. Electric account indicator;
 3. Sales tax district used by the distribution utility and whether the utility indentifies 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 ISO 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;

¹ If a DSP offers a gas profile and consumption history, a DERS may choose either option. A DSP shall make available, upon request, class average load profiles for electric customers.

² A distribution utility, in addition to EDI transmittal, may provide Web based access to customer history information.

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 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;¹ if the customer has more than one meter associated with an account, the 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 indicator;
 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;
 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.

¹ A distribution utility may provide data for a standard 24 months or life of the account, whichever is less, as part of its Customer Contract Information Set.

- D. Charges for Customer Information. No DSP shall impose charges upon DERS for provision of the information described in this Section.
- E. Unauthorized Information Release. A DERS, its employees, agents, and designees, are prohibited from selling, disclosing or providing any customer information obtained from a 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 DERS shall, prior to authorization, describe to the customer the information it intends to release and the recipient of the information.

SECTION 4: MARKETING STANDARDS

- A. Applicability. This Section describes the standards that DERS and their marketing representatives must follow when marketing products and services associated with DER products and services sold to the DSP and/or which are identified on the Digital Marketplace or any other vehicle established under the Commission's authority, to customers in New York.
- B. Training of Marketing Representatives
1. DERS shall ensure that the training of their marketing representatives includes:
 - a. Knowledge of this Section and awareness of the other Sections of the New York Uniform Business Practices for Distributed Energy Resource Suppliers;
 - b. Knowledge of the DERS' products and services;
 - c. Knowledge of DERS rates, payment options and the customers' right to cancel, including the applicability of an early 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 DERS' mechanisms for handling billing questions, disputes, and complaints.
- C. Contact with Customers
1. In-Person Contact with Customers

DERS marketing representatives who contact customers in person at a location other than the DERS' place of business for the purpose of selling any product or service offered by the DERS shall, before making any other statements or representations to the customer:

 - a. Introduce him or herself with an opening statement that identifies the DERS which he or she represents as a Distributed Energy Resource Supplier, identifies him or herself as a representative of that specific DERS; 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 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 DERS they are representing; and,
 3. Provides the DERS telephone number for inquires, verification and complaints.
- c. A DERS marketing representative must provide each prospective residential customer a business card or similar tangible object with the DERS marketing representative's first name and employee identification number; DERS' name, address, and phone number; date and time of visit and website information for inquires, verification and complaints.
- d. A DERS marketing representative must provide the customer with written information regarding DERS products and services immediately upon request which must include the DERS' 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. 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 DERS marketing representative or where the customer or another third party informs the DERS marketing representative of this circumstance, the DERS 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 DERS 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 DERS who have DERS marketing representatives conducting door-to-door marketing must maintain a

daily record, by zip code, of the territories in which the DERS' 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 DERS for a minimum of six months.

2. Telephone Contact with Customers

DERS marketing representatives who contact customers by telephone for the purpose of selling any product or service offered by the DERS shall:

- a. Provide the DERS marketing representative's first name and, on request, the identification number;
- b. State the name of the DERS on whose behalf the call is being made;
- c. State the purpose of the telephone call;
- d. 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 DERS representative or where the customer or another third party informs the DERS marketing representative of this circumstance, the DERS 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 DERS 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.

D. Conduct

DERS 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 DERS;

3. 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;
 4. 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;
 5. Ensure that any product or service offerings that are made by a DERS 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 DERS 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 federal Do-Not-Call law;
 8. Investigate customer inquiries and complaints to the DERS concerning marketing practices within five days of receipt of the complaint; and,
 9. Cooperate with the Department and PSC regarding marketing practices proscribed by these regulations and with local law enforcement in investigations concerning deceptive marketing practices.
 10. To the extent used in marketing materials or information conveyed to customers or potential customers, DERS must use forecasts of energy commodity prices which reflect a multi-year average of actual historical prices or energy prices recently forecast by the applicable NYS utility.
- E. Dispute Resolution. DERS will maintain an internal process for handling customer complaints and resolving disputes arising from marketing activities, service and billing disputes and shall respond promptly to complaints forwarded by the Department in accordance with the OCS complaint handling procedures.

SECTION 5: CUSTOMER AGREEMENT

- A. Applicability. This Section establishes the required content of a customer agreement for products or services sold by DERS associated with products and services sold to the DSP and/or which are identified on the Digital Marketplace or any other vehicle established under the Commission's authority, to customers in New York.
- B. DERS shall use sales agreements including standard contract provisions to the extent approved by the Commission.
- C. A DERS, or its agent, may solicit and enter into a sales agreement with a customer subject to the following requirements.
 - 1. The DERS shall obtain a customer agreement to purchase the product or service and customer authorization to release information to the DERS, and retain verifiable proof of such authorization.
 - 2. The DERS shall provide residential customers the right to cancel a sales agreement within three business days after its receipt (cancellation period).
 - 3. Sales Agreements shall include the following information written in plain language:
 - a. Terms and conditions applicable to the business relationship between the DERS and the customer which includes:
 - 1. provisions governing the process for rescinding or terminating an agreement by the DERS or the customer including provisions stating that a residential customer may rescind the agreement within three business days after its receipt;
 - 2. the price or a placeholder for 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; and,
 - 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.

- b. Such contract shall also include on the first page thereof a Customer Disclosure Statement (the Statement). The text within this Statement shall state in plain language the terms and conditions described above. In the event that the text in the Statement differs from or is in conflict with a term stated elsewhere in the agreement, the term described by the text in the Statement shall constitute the agreement with the customer notwithstanding a conflicting term expressed elsewhere in the agreement.
 - c. Procedures for resolving disputes between the DERS and a customer;
 - d. Department contact information;
 - e. DERS contact information, including a local or toll-free number from the customer's service location, and procedures used for after-hours contacts and emergency contacts.
- D. Provision of List of DERS to Customers. DSPs shall, upon request of a customer seeking information regarding DER products and services, refer the customer to the Digital Marketplace or other tools created under the Commission's authority.

SECTION 6: CUSTOMER INQUIRIES

A. Applicability. This Section establishes requirements for responses by a DERS to customer inquiries concerning products marketed on the Digital Marketplace or any vehicle established under the Commission's authority, as well as concerning DER products sold to the DSP. DERS 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. DERS shall provide consistent and fair treatment to customers.
2. DERS 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. DERS 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 DERS' 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 DERS 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. The DERS 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.

SECTION 7: DISPUTES BETWEEN DERS AND DSP

- A. Applicability. This Section describes the dispute resolution processes available at the Department to resolve disputes relating to competitive energy markets involving DERS and DSPs, including disputes alleging anti-competitive practices. The processes are not available to resolve disputes where one of the parties is solely a retail customer (i.e., and not also a DERS). They are also not applicable to matters that, in the opinion of the Department Staff, should be submitted by formal petition to the Public Service Commission for its determination or are pending before a court, state or federal agency. The availability of the processes does not limit the rights of a DERS or a DSP to submit any dispute to another body for resolution.
- B. Standard Informal Dispute Resolution Process
1. The parties shall in good faith use reasonable efforts to resolve any dispute before invoking any of these processes. DSP tariffs and operating and service agreements between the parties shall identify the processes used to resolve disputes, and shall refer to the dispute resolution processes described in this Section as acceptable processes to resolve disputes.
 2. Any DERS or DSP may initiate the dispute resolution process by providing a written informal complaint to the opposing party and Department Staff designated to receive such complaints and oversee this dispute resolution process. Such informal complaint shall utilize the form provided on the Department website and include a statement that the dispute resolution process is initiated and a description of the dispute, including the issues to be resolved, the parties involved and their positions on the issues, the amount of money involved, and a proposed resolution with supporting rationale.
 3. The parties shall use electronic service to send documents unless a party specifically objects. Time periods will generally be measured from the time a document is sent electronically.
 4. At intake of the informal complaint, Department Staff will screen disputes to determine if they are appropriate for informal dispute resolution. If it is decided that the complaint should go forward for informal dispute resolution, Department Staff may

- participate at the initial stage to provide informal advice to the complainant or opposing party, to arrange for an immediate meeting of the parties, or otherwise as appropriate to assist the parties in reaching a mutually acceptable resolution.
5. All dispute resolution discussions and exchanges of written information shall be confidential at all times throughout and after the dispute resolution process. No documents shall be filed with the Commission Secretary or otherwise posted publicly in the Department's Document and Matter Management system.
 6. No later than ten calendar days following service of the informal complaint, if no mutually acceptable resolution is reached (and if Staff has not advised the complainant to withdraw the complaint), the opposing party shall provide a written response containing an alternative proposal for resolution with supporting rationale to the complainant and to Department Staff.
 7. No later than ten days after service of the response, if no mutually acceptable resolution is reached, the parties must schedule a meeting for further discussions within 15 calendar days, unless the parties and Department Staff agree upon another date. The Department shall have a designated Staff facilitator who will meet with the parties to facilitate negotiations or otherwise mediate the dispute. Where possible, a swift, informal process involving direct negotiations between the parties will be favored.
 8. If no mutually acceptable resolution is reached within 60 calendar days after service of the informal complaint, the parties may request the Department Staff mediator to provide a confidential, non-binding recommendation for resolution of the issues presented for mediation, including an assessment of the merits of the principal positions advanced by each of the parties. The recommendation may be written or oral, as appropriate to the nature of the dispute and the complexity of the issues, with due regard for the timeliness of the mediator's assessment. The parties must then meet in a good faith attempt to resolve the dispute in light of the mediator's recommendations.
 9. If the parties reach a mutually acceptable resolution of the dispute, they shall provide to Department Staff a description of the general terms of the resolution.

Upon request, the parties shall provide a non-confidential summary of the resolution that can be shared with the Commission or the public.

10. If no mutually acceptable resolution is reached within 90 days after service of the informal complaint or within 30 days after receipt of the mediator's recommendation, whichever is later, the dispute resolution process shall be deemed ended and Department Staff's participation shall end. At or after that time, the complainant has six months from the date of the initial complaint to convert the informal complaint into a formal complaint and maintain the filing date of the informal complaint as the date of initiation of the dispute.
- C. Expedited Dispute Resolution Process. In the event that an emergency situation arises to justify immediate resolution of a dispute, any party may submit a request for expedited dispute resolution to the Secretary to the Public Service Commission. An emergency situation includes, but is not limited to, a threat to public safety or system reliability or a significant financial risk to the parties or the public. The complaining party shall provide a copy of the request to other involved parties and the Department Staff designated to receive information related to dispute resolution under this Section, and shall also telephone the same Department Staff to alert them to the request for expedited dispute resolution as early as possible and no later than when the request is submitted. The request shall describe in detail the emergency situation requiring expedited resolution, state in detail the facts of the dispute, and, to the extent known, set forth the positions of the parties.
- D. Formal Complaints. A party may file a formal complaint by petition to the Secretary to initiate a proceeding before the Commission at any time. If it appears to Department Staff that informal techniques may be helpful in resolving the complaint, Staff may recommend that parties pursue the informal dispute resolution process set forth here. In the event parties elect to follow the informal dispute resolution process, they shall file a letter with the Secretary and indicate whether they wish proceedings on the formal petition to be held in abeyance pending the outcome of the informal process.

SECTION 8: REQUIREMENTS OF DERS CONCERNING THE DSP

- A. Applicability. This section establishes practices for communications and other business interactions between the DSP and DERS, as well as creditworthiness requirements for DERS to sell DER to the DSP. It also explains the process that DSPs must use to discontinue a DERS' ability to sell DER to the DSP.
- B. DERS selling to the DSP, and ESCOs selling DER products bundled with commodity, must:
 - 1. In all business interactions with the DSP, use systems, processes and protocols established by the Commission.
 - 2. Have systems and processes in place to respond to DSP announcements, notifications and offerings, using electronic communications in an industry standard format established by the Commission.
 - 3. Have systems and processes in place to verify at the customer level that demand reduction commitments are actually obtained.
 - 4. Provide information to the DSP as required to ensure system efficiency and reliability, using electronic communications in an industry standard format established by the Commission.
 - 5. Satisfy the creditworthiness standards established in these rules, DSP tariffs, and/or operating and service agreements between parties. One of the following three requirements must be met in order to sell a minimum of 50 kW to the DSP.
 - a. Amount of Minimum Assets: \$10,000/kW
 - b. Tangible Net Worth: \$1,000/kW
 - c. Security Escrow Payment: \$200/kW
- C. Distribution Utility Requirements. After receipt of the Department's letter approving participation, the DERS shall notify the DSP of its eligibility status and intent to complete the process to commence operation to sell to the DSP, including execution of any operating agreement that is required.
- D. Discontinuance of a DERS' Ability to Sell DER to the DSP
 - 1. In accordance with the procedures established in this Subdivision, a DSP may discontinue an DERS' ability to sell DER to the DSP for the following reasons:
 - a. Failure to act that is likely to cause, or has caused, a significant risk or condition that

- compromises the safety, system security, or operational reliability of the distribution utility's system, and the DERS' failure to eliminate immediately the risk or condition upon verified receipt of a notice;
 - b. Failure to pay an invoice upon the due date;
 - c. Substantial failure to deliver the DER services provided for in the operating agreement;
 - d. Failure to maintain a creditworthiness standard or provide required security;
 - e. Failure to comply with the terms and conditions of a distribution utility's tariff or operating agreement to the extent that said documents are consistent with the provisions of these rules; or,
 - f. Commission determination that a DERS is not eligible to sell DER services into applicable DSP markets.
2. To initiate the discontinuance process, a DSP shall send a discontinuance notice by overnight mail and verified receipt, to the DERS and the Department. The notice shall contain the following information:
 - a. The reason, cure period, if any, and effective date for the discontinuance; and
 - b. Notice that correction of the deficiency within the cure period, or a Department directive, will end the discontinuance process.
 3. The DSP may request permission from the Department to expedite the discontinuance process, upon a showing that it is necessary for safe and adequate service or in the public interest. Any expeditious discontinuance process shall include the DERS and the DSP.
 4. Upon any discontinuance, a DERS shall remain responsible for payment or reimbursement of any and all sums owed under the DSP tariffs or any agreements between the DERS and the DSP.
 5. The notice requirements and time limits for a DSP to discontinue a DERS' ability to sell DER services to a DSP (discontinue participation) are:
 - a. Upon a DSP determination that a DERS' action, or failure to act, is likely to cause, or has caused, a significant risk or condition that compromises the safety, system security, or operational reliability of the DSP system and that the DERS failed to eliminate immediately the risk or condition upon

verified receipt of the notice required in subsection two of this part, the DSP may discontinue participation as soon as practicable.

- b. Upon a DSP determination that a DERS has failed to deliver the DER services provided for in the operating agreement, the DSP may discontinue participation no sooner than two business days after receipt by the DERS of a discontinuance notice.
- c. Upon a DSP determination that a DERS failed to pay an invoice on the due date, as specified in the distribution utility's tariff, and the DERS' required security or credit limit is insufficient to cover the unpaid amount, with interest, the DSP may discontinue participation no sooner than ten business days (cure period) after receipt by the DERS of a discontinuance notice. If the DERS pays the amount due on or before the expiration of the cure period, the DSP shall stop the process to discontinue participation.
- d. Upon a DSP determination that a DERS has substantially failed to deliver the DER services provided for in the operating agreement, the DSP may initiate a discontinuance process no sooner than five business days (cure period) after receipt by the DERS of a discontinuance notice. If the DERS provides adequate assurances of performance on or before the expiration of the cure period, the DSP shall stop the discontinuance process. Upon a determination to continue the discontinuance process because the assurances are inadequate, the DSP shall notify the DERS that it will discontinue participation no later than 15 business days from the expiration of the cure period.
- e. Upon a DSP determination that a DERS failed to provide or maintain a creditworthiness standard or required security, the DSP may initiate a discontinuance process no sooner than five business days (cure period) after receipt by the DERS of a discontinuance notice. If the DERS satisfies the creditworthiness standard or provides the required security on or before the expiration of the cure period, the DSP shall stop the discontinuance process. Upon a determination to continue with the discontinuance process because the DERS failed to comply with the creditworthiness standard or provide adequate security, the DSP shall notify the DERS

that it will discontinue participation no later than 15 business days from the expiration of the cure period. If a failure to comply with the creditworthiness standard or provide adequate security occurred twice during the past 12 months and the DSP sent a related discontinuance notice for each failure, it may discontinue participation no sooner than two business days after receipt by a DERS of a discontinuance notice.

- f. Upon a DSP determination that a DERS failed, except in force majeure conditions, to comply with any other applicable provision of the DSP's tariff or operating agreement, the DSP may initiate a discontinuance process no sooner than ten business days (cure period) after receipt by the DERS of a discontinuance notice. If the DERS provides adequate assurances and a description of any necessary process changes that ensure compliance on or before the expiration of the cure period, the DSP shall stop the discontinuance process. Upon a determination to continue the discontinuance process because the assurances are inadequate, the DSP shall notify the DERS that it will discontinue participation no later than 15 business days from the expiration of the cure period.

SECTION 9: REPORTING REQUIREMENTS

- A. Applicability. This Section establishes requirements for DERS and ESCOs selling DER products and services to assist the Department in monitoring the development, conduct and performance of energy markets.
- B. DERS and ESCOs selling DER products and services, shall:
1. Provide annual information regarding the aggregate number of customers of various DER product categories, under trade secret protection, in a format to be established by the Department, to assist the Department in monitoring DER markets.
 2. Provide information on complaints received regarding products and services sold to the DSP and/or marketed on a tool established under the Commission's authority, as requested by the Department.
 3. Provide other information as requested by the Department, whether through informal requests or interrogatories, including but not limited to, information regarding the DERS business operations and financials.
- C. DSPs shall provide information to assist the Department in monitoring DER markets, including regarding quantities and pricing. The Department shall establish the content, format and frequency of these reporting requirements.

SECTION 10: CYBER SECURITY REQUIREMENTS

- A. Applicability. This section establishes requirements for DERS and ESCOs selling DER products, relating to cyber security.
- B. All DERS and ESCOs selling DER products must have processes and procedures in place regarding cyber security consistent with the National Institute of Standards and Technology Cyber Security Framework.
- C. The details regarding protections and breach protocols shall be detailed in agreements between these entities and the DSP, and shall include at a minimum, requirements that entities conduct reviews of adherence to cyber security policies at least annually as well as terms for notifying the DSP and the Commission immediately in event of a breach.

APPENDIX B

State of New York
Public Service Commission

Case 15-M-0180 - In the Matter of Regulation and Oversight of
Distributed Energy Resource Providers and
Products

STAFF PROPOSAL

Dated: July 28, 2015

BACKGROUND

On February 26, 2015, the Commission directed Staff of the Department of Public Service (Staff) to develop proposed rules for Commission oversight of distributed energy resource suppliers (DERS) in consultation with Stakeholders.¹ It found that some supervision over DER providers will be necessary to ensure both consumer protection and fair competition. The Commission also directed development of a dispute resolution mechanism that expedites review and action on disputes between DERS and utilities.²

Staff reviewed the Uniform Business Practices (UBP) applicable to Energy Services Companies (ESCOs),³ to determine the extent to which those requirements should be applicable to DERS. Staff also issued an outline of proposed requirements including a detailed list of questions, and discussed those issues at an all-parties Technical Conference. As a follow-up to that Conference, several parties submitted additional information for the record in this case, and Staff held several conference calls with individual parties.

The Staff proposal is designed to ensure that consumers and services providers can participate with confidence in markets created by order of the Commission and managed by a Distributed System Platform (DSP) provider that is regulated by

¹ Case 14-M-0101, Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision, Order Adopting Regulatory Policy Framework and Implementation Plan, p. 105 (Issued February 26, 2015) (REV Track One Order).

² REV Track One Order, p. 52.

³ An ESCO is an entity eligible to sell electricity and/or natural gas to end-use customers using the transmission or distribution system of a utility; Case 98-M-1343, UBP, Section 1.

the Commission. Staff proposes that requirements applicable to DERS be documented in the Uniform Business Practices for DERS (UBP-DERS) included at the end of this document. The UBP-DERS model is based on the UBP for ESCOs, but includes only a subset of those requirements. Many of the UBP requirements are not applicable to DERS since DERS do not sell energy commodity and, therefore, do not trigger many elements of the Public Service Law. In addition, some UBP requirements, such as those regarding marketing practices, have been established to address demonstrated concerns with ESCO practices whereas such concerns are not apparent for DERS under the circumstances in which Staff proposes they be applied. The UBP-DERS also includes requirements beyond those in the UBP, regarding the relationship between DERS and the DSP provider or utility.

Compliance with the PSL and HEFPA

In addition to the UBP-DERS, DERS will be subject to specified sections of the Public Service Law (PSL) and the Home Energy Fair Practices Act (HEFPA). DERS fall under the PSL §53 definition of an entity that "sells or facilitates the sale or furnishing of...electricity to residential customers," and thus will be subject to PSL Articles 1 and 2. To the extent that a DERS will own or operate any generation unit eligible to participate in net metering, the DERS must do so in conformance with PSL §66-j and §66-l.⁴

However, since DERS are not "electric corporations" under the PSL, they will not be subjected to the rate regulation

⁴ In this role, the DERS would be exempt from PSL jurisdiction to the same extent as any other owner or operator of a clean generation facility that is a qualifying facility (QF) as defined at PSL §§2(2-a)-(2-c) entitled to the exemptions at PSL §§2(2-d) and 2(13).

or regulatory requirements of Article 4.⁵ PSL §66(1) provides that the Commission's general supervisory duties normally extend to those electric corporations that have "authority...to lay down, erect or maintain wires, pipes, conduits, ducts or other fixtures in, over or under the streets, highways and public places...." DERS will not engage in these activities and thus are not electric corporations under PSL Article 4.

Additionally, relationships between residential customers and DERS will be subject to the complaint resolution process provided for in HEFPA, and in the Commission's regulations at 16 NYCRR Part 11, to the extent relevant. For example, HEFPA complaint resolution processes would apply, while those related to termination or suspension of electric service to a customer would not adhere because the termination of a customer's agreement with the DERS for reasons of non-payment, or otherwise, will not affect their ability to receive service from an electric distribution utility.

Applicability of UBP-DERS

The Commission concluded that its oversight of DER providers would be triggered in two circumstances: (1) when providers acquire customer data by any means established under the Commission's authority, and (2) when DER services are sold into the DSP markets.⁶ The first criterion is not applicable at this time since the Commission has not directed establishment of

⁵ Case 94-E-0952, In the Matter of Competitive Opportunities Regarding Electric Service, Opinion and Order Deciding Petitions for Clarification and Rehearing, pp. 34-35 (issued November 18, 1997).

⁶ REV Track One Order, p. 105.

means for DERS to obtain customer data, such as the Digital Marketplace.⁷

Regarding the second criteria, although Distributed System Implementation Plan (DSIP) filings have not yet been made or approved, markets for distributed energy resources currently exist and are growing. For example, the Commission has approved distribution-level demand response programs for all electric utilities.⁸ The Commission has also adopted a Community Distributed Generation Program to allow multiple customers to net meter from a single distributed generation facility.⁹ Accordingly, Staff proposes that the UBP-DERS be applicable to DERS participating in utility DER programs, including distribution-level demand response programs, for products and services sold to mass market customers associated with those utility programs. For example, entities selling demand response resources pursuant to utility distribution-level demand response tariffs would be subject to these requirements, including demand response providers, aggregators and ESCOs. Similarly, DERS providing Non-Wires-Alternatives (NWAs), such as participants in

⁷ The Commission concluded that a digital marketplace would have substantial value and directed further exploration of how it could be designed, owned and operated to instill market confidence, facilitate transactions to help consumers reduce their energy bills, and further develop DER markets (REV Track One Order, p. 61). That investigation is underway.

⁸ Case 14-E-0432, et al., Proceeding on Motion of the Commission to Develop Dynamic Load Management Programs, Order Adopting Dynamic Load Management Filings with Modifications (Issued June 18, 2015).

⁹ Case 15-E-0082, Proceeding on Motion of the Commission as to the Policies, Requirements and Conditions for Implementing a Community Net Metering Program, Order Establishing a Community Distributed Generation Program and Making Other Findings, (issued July 17, 2015) (Community DG Order).

the Brooklyn/Queens Demand Management Program,¹⁰ would be subject to these requirements for DER products and services which are part of those projects.¹¹ Staff also proposes that these requirements be applicable to the Commission's Community Distributed Generation Program, as prescribed in the Commission's Order adopting that program.¹² These applicability criteria will be revisited as more DSP-like products and services become available, and as the Commission authorizes the Digital Marketplace or other tools for providing customer data to DERS.

The new requirements would be applicable 90 days after issuance of the Commission's Order adopting requirements. These practices will also be applicable to ESCOs in certain circumstances. The definition of DERS used herein incorporates all entities selling DER products, including entities selling energy commodity. ESCOs which only sell energy commodity are subject only to the UBP. ESCOs which sell DER products, either bundled with energy commodity or as standalone products, would be subject to the UBP, and to the UBP-DERS for applicable DER products. Such ESCOs would be required to abide by the following requirements which are incremental to existing UBP requirements: certain information required for the application (Section 2), a marketing rule as identified in Section 4.B, rules governing conduct with the DSP (Section 8) and reporting

¹⁰ Case 14-E-0302, Petition of Consolidated Edison Company of New York, Inc. for Approval of Brooklyn/Queens Demand Management Program, Order Establishing Brooklyn/Queens Demand Management Program (Issued December 12, 2014).

¹¹ Electric utilities were directed to file proposals by May 1, 2015, for NWAs pursuant to the Commission's February 26, 2015 Order in Case 14-M-0101, *supra*.

¹² Community DG Order, p. 11.

requirements (Section 9). For administrative efficiency, an addendum to existing ESCO applications would be created to address additional application requirements applicable to such ESCOs.

Comment is invited on the proposed applicability of these requirements. Comment is also invited on the extent to which these rules should be applicable to DERS operating as utility or NYSERDA contractors or subcontractors in utility demand response programs, utility and/or NYSERDA energy efficiency programs, or NWA programs, and the extent to which such entities must now comply with comparable requirements.

Potential Self-Regulation

Self-regulation is likely to be effective in industries in which the fate of the industry depends on individual members adopting reasonable practices. Conceptually, DERS, or segments of the industry, could develop a self-regulation regime including enforcement. For example, the industry could actively identify questionable marketing practices before they lead to a large volume of consumer complaints, discourage industry participants from using such practices, and take action against entities which continue to use such practices. It appears at this time that only the solar industry has taken steps toward regulating itself. That industry is currently developing informational materials for consumers and vendors, and has made some progress in developing a code of ethics and enforcement mechanism.

In the absence of tangible self-regulation in the DER industry at this time, Staff recommends that the Commission establish rules for DERS, including a Code of Conduct and enforcement mechanism. In the future, industry segments, such as the solar industry, which develop a comprehensive self-

regulation framework that meets or exceeds the Commission's approved Code of Conduct, including enforcement, could petition the Commission to have their self-regulatory regime replace some, or all, Commission oversight. Comments are invited on the appropriate role of self-regulation for DERS, and this proposal in particular.

Issues to be Addressed in Subsequent Phases of this Proceeding

Substantial work is underway in Case 14-M-0101 and related dockets that may substantially impact the standards and practices to be applicable to DERS. For example, details regarding the systems, practices and protocols to be used by the DSP in its communications with DERS are expected to be addressed in utility DSIP filings to be made in 2016. Similarly, issues concerning the design, ownership and operation of the Digital Marketplace, including how DERS will participate, are being evaluated. As these issues are resolved, further changes to the proposed UBP-DERS may be considered. Similarly, these proposed requirements presume that DER products and services cannot be included on utility bills, except for ESCO products which bundle DER products with energy commodity and as permitted by legislation authorizing on-bill recovery of certain NYSEDA energy efficiency programs.¹³

In addition, the proposed UBP-DERS refer to several documents which have not yet been drafted. These include the application for DERS to be deemed eligible to sell to the DSP and obtain customer data from tools established under Commission authority, standard contract terms for retail DER products, and standard contracts and/or contract terms for DSP products.

¹³ Public Service Law § 66-m, Green Jobs-Green New York On-Bill recovery.

Staff proposes that these documents be developed using a collaborative process in a subsequent phase of this proceeding.

PROPOSED UBP-DERS

The practices to be applicable to DERS and, where indicated, ESCOs selling DER products and services, can be grouped into three categories: application and eligibility requirements; practices applicable to DERS regarding retail consumers; and requirements applicable to DERS and DSPs concerning business-to-business issues.

Code of Conduct

Staff proposes to work with the DER industry and other interested stakeholders to develop a Code of Conduct of general applicability to the industry. The Code of Conduct can then be used a basis for both determining eligibility, risk management, and censure for misconduct. As such, the Code of Conduct will reflect core issues of importance to consumers, including the DER's ability to: provide high quality and responsive customer service; use common, easy-to-understand contracts and/or contract language; and demonstrate that the DERS is performing well. Specific standards may differ among various segments of the DER supplier industry. The Staff envisions that the Code of Conduct standards for DER providers will in many ways mirror a similar process for ESCOs and may take some time to conclude and gain Commission approval. Until such standards are developed and approved by the Commission, Staff proposes the following requirements related to application and eligibility.

A. Application Requirements

To be authorized to participate in New York's energy markets as identified above, it is proposed that DERS be required to obtain a finding of eligibility from DPS Staff. To do so, DERS would be required to submit an application including information such as company name and contact information, a list of products and services to be offered, sample sales agreements, a list of any criminal or regulatory sanctions imposed in the last two years against the entity or its employees, a list of current investigations being conducted by law enforcement or regulatory entities, and information regarding any security breaches associated with customer-specific information. DPS Staff would review the application and may request additional information to help ensure that the applicant satisfies all eligibility requirements. The recommended application process is similar to that currently applicable to ESCOs as specified in the UBP, although the application is much less detailed. One difference between the application process in the current UBP and the process proposed here is that completed applications do not automatically result in approval to operate in New York's energy markets as defined above. Instead, Staff may recommend that the Commission deny an entity's application, with good cause shown. The proposed UBP-DERS includes procedures to ensure due process to applicants.

It is also recommended that utilities consider development of market-based revenues associated with services they provide to DERS and ESCOs participating in DSP markets, consistent with Staff's proposal in Track Two of Case 14-M-0101.¹⁴ These market-based revenues would be for value-added services, and potentially include an initial application fee for

¹⁴ Case 14-M-0101, Supra, DPS Staff Track Two Straw Proposal (Issued July 28, 2015).

access to the DSP market as well. The development of any such revenue streams will be pursued as part of Track Two in Case 14-M-0101. Comments are invited on general issues associated with market-based revenues applicable to DERS and ESCOs, including their development, application and impact on regulated revenue requirements in this docket, as well as in Case 14-M-0101 for parties participating in that docket.

To be deemed eligible, DERS must agree to abide by all requirements established by the Commission, including being subject to consequences that may be imposed for non-compliance.

B. Procedures for PSC to Impose Consequences for Non-Compliance

The UBP explains the conditions under which the Commission may impose consequence for ESCO non-compliance with those rules, as well as the processes to be used to ensure due process. The proposed UBP-DERS includes similar conditions and processes, including a cure period in most circumstances, designed to facilitate prompt and effective enforcement of Commission rules. Staff proposes that a cure period need not be provided when a DERS has had multiple failures within a three-year period, and for egregious acts, including a security breach affecting customer-specific information of all or most customers. Comments are invited on the application of a cure period and these proposed exceptions.

Requirements Concerning Business-to-Consumer Issues

A. Protection of Customer Information

Energy consumers have control over access to their customer-specific information including usage history, and may provide it directly to other entities, or authorize utilities to

provide it to approved entities such as ESCOs. The UBP establishes practices for the release of customer information by utilities to ESCOs, identifies the content of information sets to be provided by utilities to authorized ESCOs upon authorization of the consumer, and requires ESCOs to safeguard that information. The proposed rules would apply similar requirements to DERS. The proposed rules would also require utilities to respond to requests from only authorized DERS.

The Commission may authorize creation of new tools or mechanisms to facilitate transfer of customer-specific information to non-utility parties, such as a Digital Marketplace or the use of protocols such as Green Button Connect. The proposed UBP-DERS would require DERS to abide by rules regarding the release, content, and protection of data as established by the Commission.

B. Marketing Standards

The UBP establishes detailed requirements that ESCOs and their marketing representatives must follow. Those rules have been modified several times, most recently in February 2015, in response to concerns about certain marketing practices.¹⁵ The proposed rules applicable to DERS describe marketing standards that DERS and their marketing representatives must follow when marketing products and services which are associated with DER products and services sold to the DSP.¹⁶ The proposed rules also identify specific requirements to

¹⁵ Case 12-M-0476, et al., Proceeding on Motion of the Commission to Assess Certain Aspects of the Residential and Small Non-Residential Retail Energy Markets in New York State, Order Granting and Denying Petitions for Rehearing in Part, February 6, 2015.

¹⁶ As described above, these products and services are limited to utility distribution-level demand response, the Commission's

address a known concern that some DERS currently use inflated forecasts of energy commodity prices while marketing to end users, thereby overestimating savings. As with the UBP applicable to ESCOs, these rules may be modified in the future to include additional requirements to address specific concerns with DERS marketing practices.

C. Customer Agreements

Enabling consumers to readily understand and compare contracts for retail DER products and services would substantially enhance consumer understanding, transparency, and consumer confidence in DER markets. One way to achieve this goal is to develop specific standardized contract language for retail DER products and services to address key issues of importance to consumers, such as: a mandatory Customer Disclosure Statement; the term of the contract; pricing and early termination fees; explanation of authorizations for DERS to obtain certain customer-specific information; consumer protections; procedures applicable to address disputes; and how the customer may contact the DERS. Comments are invited on an approach under which specific contract terms, as well as potential differences among industries, would be explored in a subsequent phase of this proceeding. Comments are also invited on alternative approaches which achieve the goals articulated above. The proposed rules require DERS to use specific contracts or contract terms, including a Customer Disclosure Statement, to the extent developed.

Community Distributed Generation Program, and NWA programs at this time. As the Digital Marketplace or other tools are developed by authority of the Commission, these requirements will be applicable to additional products and services.

D. Customer Inquiries

The UBP establishes requirements for responses of ESCOs to customer inquiries, including providing toll-free contact information, requiring that customers be treated fairly and consistently and requiring a response to such inquiries in specified time periods. The proposed rules would apply similar requirements to authorized DERS.

Requirements Concerning Business-to-Business Issues

A. DERS-DSP Requirements

Substantial work is underway to establish the systems, processes, and protocols to be used by DSPs, DERS and ESCOs selling DER products and services to the DSP. For example, the Staff is developing proposed content and format of data to be exchanged among DSPs and entities selling DER to the DSP, including: customer-specific transactional data necessary to participate in utility programs as well as the anticipated DER markets administered by the DSP; distribution system operational data needed to monitor and effectively dispatch DER resources; and distribution system planning data to assist DERS in making investment decisions. Specific systems, processes, and protocols are expected to be included in DSP filings to be made in 2016. The rules proposed herein, require DERS selling to the DSP, including ESCOs selling DER products, to use systems, processes, and protocols that are approved by the Commission.

The proposed standards and practices also establish creditworthiness standards for sales to the DSP. In addition, the proposed rules establish a process by which DSPs can discontinue a DERS' ability to sell DER to the DSP, and detail the DERS' due process rights.

B. Dispute Resolution

The Commission directed development of a dispute resolution mechanism that quickly and inexpensively resolves disputes between DERS and DSPs on issues that may deter DER investment.¹⁷ The proposed process to resolve disputes between DERS and DSPs is similar to the existing process for ESCO/utility disputes. Some of the key enhancements are that the proposed DERS/DSP dispute resolution process include establishing a strict process end-date, eliminating public filings currently required in the expedited process used for emergencies, and creating a standard simple form on the Department of Public Service website to be used for all informal complaints between DERS and DSPs.¹⁸

C. Reporting Requirements

Commission oversight of certain aspects of DER markets will be required to help ensure that markets develop as anticipated and that rules are modified as needed to reflect market factors. To effectively monitor DER markets, information may be sought from the DSP and/or individual DERS, including ESCOs selling DER products bundled with commodity. The proposed rules require DSPs, DERS, and ESCOs selling DERs, to provide information to the Department upon request, including consumer complaints concerning products and services sold to the DSP.

¹⁷ REV Track One Order, p. 52.

¹⁸ It is Staff's intention to establish an identical dispute resolution process for DERS and ESCOs, and to propose modifications to the UBP to achieve that goal as soon as is practical.