

STATE OF NEW YORK
DEPARTMENT OF PUBLIC SERVICE

Case 23-M-0106 - In the Matter of Commission Registration of Energy Brokers and Energy Consultants Pursuant to Public Service Law Section 66-t.

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

Case 98-M-1343 - In the Matter of Retail Access Business Rules.

STAFF PROPOSAL REGARDING ENERGY BROKER AND
CONSULTANT FINANCIAL ASSURANCE REQUIREMENTS

INTRODUCTION AND BACKGROUND

In 2022, Governor Hochul signed Public Service Law (PSL) § 66-t into law.¹ The statute requires energy brokers and consultants to register with the Public Service Commission (Commission).² As part of the registration, brokers and consultants must demonstrate financial accountability “by a bond or other method of financial accountability” in differing amounts—at least \$100,000 for brokers and at least \$50,000 for consultants.³ On June 23, 2023, the Commission issued the Order Adopting Energy Broker and Energy Consultant Registration Requirements, which effectuated the provisions of PSL § 66-t through modifications to the Uniform Business Practices (UBP) and Uniform Business Practices for Distributed Energy Resource Suppliers (UBP-DERS).⁴ Under the June 2023 Order, the Commission

¹ Chapter 787 of the Laws of 2022.

² PSL § 66-t(3)(a).

³ PSL § 66-t(3)(a)(i)-(ii).

⁴ Cases 23-M-0106 et al., Order Adopting Energy Broker and Energy Consultant Registration Requirements (issued June 23, 2023) (June 2023 Order).

determined that brokers and consultants must provide an irrevocable letter of credit to satisfy the statute's financial accountability requirement.

After adopting the June 2023 Order, the Commission received three petitions for rehearing and one related petition for a declaratory ruling. The Commission addressed those petitions in an April 18, 2024 Declaratory Ruling and Order on Rehearing.⁵ As is relevant here, the Rehearing Order rejected arguments that the Commission must accept a surety bond as a method of financial accountability.

Following the Rehearing Order, certain regulated entities and one industry organization (collectively, the petitioners) commenced two separate CPLR article 78 proceedings challenging certain aspects of the Commission's orders. The petitioners primarily argued that the statute allows brokers and consultants to demonstrate financial accountability via a surety bond. The Commission had thus, in the petitioners' view, misinterpreted the statute by requiring a letter of credit instead.

On June 25, 2025, New York State Supreme Court, Albany County held that PSL § 66-t allows regulated entities to satisfy the financial accountability requirement with a bond.⁶ The Court therefore permanently enjoined the Commission from "removing bonds as an acceptable form of financial accountability."⁷ On all other issues, the Court sided with the Commission.

⁵ Cases 23-M-0106 et al., Declaratory Ruling and Order on Rehearing (issued April 18, 2024) (Rehearing Order).

⁶ Diversegy, LLC et al. v. New York State Pub. Serv. Comm'n, No. 907356-24, at *5 (N.Y. Sup. Ct., Albany County June 25, 2025).

⁷ Id.

PROPOSAL

Department of Public Service (DPS) Staff offer this proposal recommending modifications to the UBP and UBP-DERS to reflect the Court's order and to specifically include a bond as an acceptable form of financial assurance under PSL § 66-t(3). Specifically, DPS Staff recommends the following redlines to UBP § 11.B.1.j and UBP-DERS § 4.B.1.j, which both include identical language:

j. A demonstration of financial accountability in the form of either:

i. An irrevocable standby letter of credit issued by a reputable financial institution in the amount of \$100,000 for registering Energy Brokers; and \$50,000 for registering Energy Consultants, that meets the following conditions:

~~i~~ 1. The New York State Department of Public Service shall be named as beneficiary and the letter of credit applicant shall be clearly named;

~~ii~~ 2. Any number of partial drawings shall be permitted from time to time;

~~iii~~ 3. The process for making a drawing, including any required forms and communications or delivery instructions shall be stated;

~~iv~~ 4. If a drawing is made, payment shall be made to the beneficiary within 5 business days;

~~v~~ 5. Any expiration date shall be specified and options for renewal, including automatic renewal, shall be stated.

~~vi~~ 6. The applicant's filing for bankruptcy, receivership, or any other debt-relief petition shall in no way affect the issuer's liability to the beneficiary under the letter of credit.

~~vii~~ 7. All commissions, fees, and other charges with respect to the letter of credit shall be paid by the applicant;

~~vii~~ 8. Except for increases to the amount, the letter of credit shall not be amended, changed, or modified without express written consent of the beneficiary;

~~ix~~ 9. The beneficiary shall not be deemed to have waived any rights under the letter of credit unless an authorized representative thereof has signed a dated written waiver. No such waiver, unless expressly stated therein, shall be effective as to any subsequent transaction, nor to any continuance of a breach; and

* 10. If the beneficiary should require a replacement of the letter of credit due to loss or destruction of the original, the issuer will provide one upon request; or

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

1. The New York State Department of Public Service shall be named as the obligee;

2. As a condition of the bond, the applicant and its employees are required to comply with all applicable provisions of the laws of the State of New York and the rules, regulations, and orders of the Commission and of the Department, including, but not limited to, the Uniform Business Practices and the Uniform Business Practices for Distributed Energy Resource Suppliers;

3. If the applicant breaches the bond's conditions, the Department may recover against the bond for the reimbursement of fees or other charges that the Department has determined were improperly collected from customers; for the payment of past due fees or other charges owed by the applicant to the Department, including any unpaid penalties; and for any customer reimbursements or other remedial or financial obligations of the applicant in the event of the applicant's insolvency, liquidation, or bankruptcy or the expiration, surrender, or revocation of the applicant's registration;

4. Immediately upon recovery on any claim or action on or under the bond, the applicant shall file a new or supplemental bond restoring the face amount of the bond to the required amount;

5. The bond shall be continuous and shall remain in force until the surety is released from liability by the Department or until the bond is canceled by the surety. Without prejudice to any liability accrued prior to the cancellation, the surety may cancel the bond on ninety days advance notice in writing sent by mail to the applicant and to the Department;

6. The bond's termination shall not terminate or otherwise affect any liability of the applicant or its employees to its customers or to the Department;

7. The surety will give prompt notice to the applicant and to the Department of any notice received or action filed alleging the insolvency or bankruptcy of the surety or alleging any violations of regulatory requirements which could result in suspension or revocation of the surety's license to do business. In

the event the surety becomes unable to fulfill its obligation under the bond for any reason, notice shall be given immediately to the applicant and to the Department;

8. All commissions, fees, and other charges with respect to the surety bond shall be paid by the applicant.

To ensure that energy brokers and consultants subject to PSL § 66-t are provided with sufficient time to comply with these requirements, Staff proposes that brokers and consultants be given until 60 days after the issuance of a Commission order addressing this proposal to come into compliance with any revisions to UBP § 11.B.1.j and UBP-DERS § 4.B.1.j.

DPS Staff offers this proposal for public comment and Commission consideration.

Dated: August 28, 2025
Albany, New York