STATE OF NEW YORK
DEPARTMENT OF PUBLIC SERVICE

Case 23-M-0106 – In the Matter of Commission Registration of Energy Brokers and Energy Consultants.

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 REGISTRATION OF ENERGY BROKERS AND ENERGY CONSULTANTS

Dated: March 14, 2023

BACKGROUND

On December 23, 2022, Governor Hochul signed into law Chapter 787 of the Laws of 2022 (L. 2022, ch. 787). Chapter 787 adds a new §66-t to the Public Service Law (PSL) that requires energy brokers and energy consultants to register with the Public Service Commission (Commission). As part of such registration process, the broker or consultant is required to demonstrate financial accountability and pay a $500 annual registration fee. PSL §66-t also requires brokers or consultants to disclose the form and amount of compensation to their customers on any contract or agreement with the customer and prohibits the offering of rebates by energy brokers and consultants.

Many energy brokers or consultants work in conjunction with Energy Services Companies (ESCOs) or Distributed Energy Resource (DER) suppliers, whose business practices are currently governed by Uniform Business Practices (UBPs) adopted for each category of entity.[1]

PROPOSED CHANGES TO THE UBP

To effectuate the requirements of PSL §66-t, Department of Public Service Staff (Staff) proposes amendments to both the UBP for ESCOs and the UBP for DER suppliers (UBP-DERS). All energy brokers and consultants would be subject to these amendments regardless of whether they are working with an ESCO or DER supplier. Included as part of this proposal are the following:

- Attachment A, which memorializes the information requirements associated with the application form for

[1] Case 98-M-1343, In the Matter of Retail Access Business Rules, Order on Rehearing, Reconsideration, and Providing Clarification (issued September 18, 2020); Case 15-M-0180, In the Matter of Regulation and Oversight of Distributed Energy Resource Providers and Products, Order Establishing Oversight Framework and Uniform Business Practices for Distributed Energy Resource Suppliers (issued October 19, 2017).

energy brokers and consultants of ESCOs and DER suppliers;

- Attachment B, which provides proposed modifications in redline to the ESCO UBP requirements; and
- Attachment C, which provides proposed modifications in redline of the UBP-DERS.

Notwithstanding the changes being proposed here, ESCOs and DER suppliers would remain responsible for the actions of their agents, including any energy broker or consultant enrolling customers for the benefit of an ESCO or DER supplier. The following is an explanation of the changes Staff proposes.

I. Registration Form: Attachment A

Staff recommends that energy brokers and consultants be required to complete and submit a registration form each year. Attached to this proposal as Attachment A is a proposed registration form. As shown in Attachment A, the registration form would require: (1) contact information for the applicant; (2) identification of any affiliates of the applicant conducting energy-related business; (3) identification of any corporate entity with an ownership interest of 10% or more in the applicant; (4) information on the methods by which the applicant intends to market energy products and services; (5) identification of other states in which the applicant operates; (6) identification of any criminal or regulatory sanctions from any jurisdiction imposed against the applicant, any senior officer of the applicant, and any corporate entity with an ownership interest of 10 percent or more in the applicant; (7) identification of any pending regulatory actions or investigations from any jurisdiction involving the applicant; (8) identification of any acquisitions, mergers, dissolutions,

or bankruptcy involving the applicant in the previous 36 months; and (9) security breaches associated with customer information.

Additionally, an energy broker or consultant would be required to file proof of registration with the New York State Department of State, which would be used as evidence that the entity is authorized to do business in New York State. An energy broker or consultant doing business under another name (DBA) would be required to file the assumed name certificate. Any broker or consultant conducting door-to-door solicitation would also be required to submit proof of compliance with any local laws, rules, regulations, or ordinances requiring a registration, permit, license, certification, authorization, or other approval to conduct door-to-door solicitation in the area in which the broker or consultant is to conduct soliciting activities during the annual registration period.

Any energy broker or consultant that has a sales contract with the consumer would also be required to submit a sample of its compensation disclosure statement and samples of any sales agreement. Such contracts must be reviewed and approved by Staff prior to using any contract to enroll customers. Additionally, applicants would be required to submit: (1) sample forms of notice sent to customers upon assignment, discontinuance, or transfer of customers, (2) procedures used to obtain customer authorization for access to a customer's historic usage or credit information, (3) sample informational and promotional materials used for mass marketing purposes, (4) a completed Service Provider Contact Form, and (5) an Officer Certification document sworn to by a high-level officer of the applicant, such as the Chief Executive Officer, President, or the equivalent in office, function, and ability to legally

commit the entity, attesting that the information contained in the registration package is accurate and truthful.

PSL §66-t(3)(d) requires that a registered energy broker or consultant notify the Commission upon changing his, her, or its legal name. Staff recommends that, if there is any change to any information contained in the registration form, including but not limited to a change to the legal name of the energy broker or consultant, the registrant must file an amended registration form reflecting that change within five business days of the change.

Staff recommends that any entity that performs services that meet the definition of both "energy broker" and "energy consultant" only be required to register once as both entities and follow the process to register as an energy broker.

II. Proposed Modifications to UBPs for ESCOs and DER Suppliers: Attachments B and C

As noted, this proposal includes proposed changes to the UBPs for ESCOs and DER suppliers. To be clear, the proposed changes discussed below appear as redlines in the UBPs for each of the categories of entities, which are included in Attachments B and C to this proposal.

A. Registration Requirements

PSL §66-t(3) requires that all energy brokers and energy consultants register annually with the Commission, demonstrate financial accountability, and pay an annual registration fee of $500. Staff proposes a registration package be submitted by the brokers and consultants which consists of a registration form, letter of credit, and registration fee payment. Pursuant to PSL §66-t, failure to register with the Commission and pay the required fee may result in enforcement against the energy broker or consultant.

To promote efficient monitoring of potentially numerous registrants, Staff proposes that the Commission establish a set date by which annual compliance would be tracked. Specifically, Staff proposes a program year of September 1st through August 31st with annual compliance due on August 31st of each year. Staff proposes that registrants that register outside of the established registration date pay the full $500 fee at the time of initial registration, and then pay $500 upon renewal on August 31st of each year.

ESCOs and DER suppliers would be required to verify that any energy broker or consultant working on its behalf is properly registered with the Commission and should perform regular reviews to ensure the registrations of such brokers or consultants remain valid. The Department would maintain a list of registered energy brokers and consultants on its website.

B. Demonstration of Financial Accountability

PSL §66-t(3) requires that energy brokers demonstrate financial accountability as evidenced by a bond or other method of financial accountability in an amount not less than $100,000 and that energy consultants demonstrate financial accountability as evidenced by a bond or other method of financial accountability in an amount not less than $50,000. To meet this statutory requirement, Staff proposes that energy brokers and consultants be required to obtain an irrevocable standby letter of credit issued for a period of at least one year with the Department as beneficiary.

C. Registration Fee

PSL §66-t(3)(c) requires energy brokers and consultants to pay the Commission an annual registration fee of $500. To address this requirement, Staff proposes that energy brokers and consultants be required to submit a check for $500 made out to

the "New York State Department of Public Service". It is appropriate for the payment to be made to the Department because the Department would be acting on behalf of the Commission in collecting the fees and is the entity to whom monies are otherwise appropriated. This is the only form of payment the Department is capable of receiving.

D. Approval or Denial of Registration

Under this proposal, once all the components of the registration package have been received and the registration has been approved by Staff, the broker or consultant would be authorized to operate in New York. The Department would provide a written communication to the energy broker or consultant that it is approved to operate in New York. This registration process would not convey a license to registered energy brokers and consultants.

PSL §66-t(3)(b) authorizes the Commission to refuse to register an applicant or to revoke a registration if, in the Commission's judgment, the energy broker or consultant has given cause for the revocation or suspension of operations. Staff recommends that the Commission consider the energy broker or consultant's record of compliance with laws and regulations of New York and other states in determining whether a registration should be granted or revoked. A violation of law or regulation in another state by the broker or consultant may be considered cause for revocation or suspension.

E. Annual Renewal of Registration

In addition to the initial registration fee, registered energy brokers and consultants would be required to pay an annual $500 fee by August 31st of each year, which would be paid in the same manner as the initial registration fee. As part of this renewal, registered energy brokers and consultants may

submit their registration package up to 30 days in advance of the compliance year to ensure that their registration will remain active. The registration package should clearly identify any changes made since the initial registration package.

F. Disclosure of Compensation

PSL §66-t(4) requires energy brokers and energy consultants to disclose their form and amount of compensation to customers via a conspicuous statement on any contract or agreement between the energy agent, consultant, broker, or intermediary and its customer. Staff recommends that if an ESCO or DER supplier collects broker compensation on behalf of the broker or consultant, such compensation shall be added to the Customer Disclosure Statement in the ESCO or DER supplier's customer agreement and reflect the amount and method. To the extent there are caps or limits on the price ESCOs or DER suppliers may charge for any certain product, Staff believes that those pricing restrictions must continue to be observed, inclusive of any and all fees, including but not limited to energy broker or consultant compensation.

To the extent that an energy broker or consultant has a direct contractual relationship with customers, Staff proposes that energy brokers and consultants be required to set forth the form and amount of their compensation on the first page of any contract or agreement with their customers. The broker or consultant would be required to submit a sample disclosure of compensation statement as an attachment to its registration form.

Staff recommends that all such disclosures of compensation to customers include any dollar amount paid to the broker or consultant, the form in which the compensation was given to the broker or consultant, the entity that made the payment, and any

broker fee or margin that was added to the energy supplier's rate. Staff further recommends that this financial disclosure include anything of value that was given as compensation to the energy broker or consultant for its work, including commissions, bonuses, and any non-financial compensation. Additionally, Staff recommends that this statement be made in plain language and appear in 12-point font size or larger.

G. Enforcement

The amendments added under PSL §66-t also include new provisions related to enforcement. Specifically, PSL §66-t(2) prohibits any person, firm, association, or corporation from acting as an energy broker or energy consultant or identifying as an energy broker or energy consultant without first registering with the Commission. PSL §66-t(2) also prohibits a person from accepting any commission, service fee, brokerage, or other valuable consideration for selling, soliciting or negotiating an energy contract in New York State if they are required to be registered under PSL §66-t and are not registered.

PSL §66-t(5) prohibits any energy broker, energy consultant, or any person acting on behalf of the broker or consultant from offering or making, directly or indirectly, any rebate of any portion of the fee, premium, or charge made, or from paying or giving to any entity acting as a representative of the energy rate payer, either directly or indirectly, any commission, any part of its fees or charges, or any other consideration or valuable thing, as an inducement or compensation for any energy supply or energy-related business. Staff interprets this language to include anything of value offered as an inducement or compensation for exclusive access to the rate payer or the dwelling unit or multiple-dwelling unit

structure in which the rate payer resides. Additionally, PSL §66-t(5) prohibits any entity acting as a representative of the energy rate payer or of the prospective energy rate payer or anyone having any interest in the real property from knowingly receiving, directly or indirectly, any such rebate or other consideration or valuable thing.

Any person, firm, association or corporation who or which acts in violation of PSL §66-t(2) is subject to a penalty not to exceed $5,000 for each violation. Violations of PSL §66-t(5), would subject the broker/consultant to a penalty equal to the greater of $5,000 or up to ten times the amount of compensation or rebate received or paid.

To implement §66-t(2) and (5), Staff recommends that the existing enforcement process established in UBP §2 for enforcement against an ESCO be utilized for enforcement actions against all energy brokers and energy consultants. This process would be established in a new UBP §11 and a new UBP-DERS §4. Under this proposal, the broker/consultant subject to an enforcement action would be provided notice and an opportunity to respond prior to the imposition of consequences by the Commission. Specifically, a broker/consultant subject to an enforcement action would be provided either (1) notification in writing (referred to as a Notice of Apparent Violation or NOAV) from the Department to the broker or consultant of its failure to comply, requesting corrective action within a certain "cure" period; or (2) an Order to Show Cause (OTSC) from the Commission directing that the broker or consultant show cause why available sanctions should not be imposed. The NOAV and OTSC would provide a factual basis underlying the claimed violation, a citation to the specific law, rule, or regulation allegedly violated, any dollar figure associated with the alleged

violation(s), and an explanation of any other remedy available to the Department and/or Commission, including revocation of the right to operate in New York. Following an opportunity to respond by the broker/consultant, the Commission may impose available sanctions if the broker or consultant fails to take corrective action within the cure period or if the Commission determines that the noncompliance is substantiated and the consequence is appropriate.

In addition to the financial penalties noted above, consequences for non-compliance may include suspension from Commission approved programs, suspension of the ability to enroll new customers, imposition of a requirement to record all telephonic and door-to-door marketing presentations for Department review, Reimbursements to customers who did not receive promised savings or to customers who incurred costs as a result of the broker or consultant's failure to comply with marketing standards, release of customers from sales agreements without imposition of early termination fees, revocation of a broker or consultant's registration, and any other measures the Commission may deem appropriate.

In summary, PSL §66-t(2) prohibits any person, firm, association, or corporation from acting as an energy broker or energy consultant or identifying as an energy broker or energy consultant without first registering with the Commission. PSL §66-t(2) also prohibits a person from accepting any commission, service fee, brokerage, or other valuable consideration for selling, soliciting or negotiating an energy contract in New York State if they are required to be registered under PSL §66-t and are not registered. Any person, firm, association or corporation who or which acts in violation of PSL §66-t(2) will be subject to a penalty not to exceed $5,000 for each violation.

Violations of PSL §66-t(5), the prohibition on rebates, will subject a broker or consultant to a penalty equal to the greater of $5,000 or up to ten times the amount of compensation or rebate received or paid.

APPLICABILITY OF PROPOSED CHANGES

PSL §66-t defines "energy broker" as "an entity that assumes the contractual and legal responsibility for the sale of electric supply service, transmission or other services to end-use retail customers, but does not take title to any of the electricity sold, or an entity that assumes the contractual and legal obligation to provide for the sale of natural gas supply service, transportation or other services to end-use retail customers, but does not take title to any of the natural gas sold."[2] The term "energy consultant" is similarly defined very broadly to mean any "person, firm, association or corporation who acts as broker in soliciting, negotiating or advising any electric or natural gas contract, or acts as an agent in accepting any electric or natural gas contract on behalf of an ESCO."[3] These two definitions cover both individuals and business entities that undertake a multitude of activities related to seeking contracts for energy services, including soliciting, negotiating, advising, entering into the contract itself, assuming the legal responsibility associated with the sale of electric or gas supply service, and finally, acting as an agent regarding any and all such activities. Accordingly, consistent with the plain language of PSL §66-t(1)(c) & (d), Staff proposes that any individuals or business entities that anticipate undertaking any of these activities must register

[2] PSL §66-t(1)(c).
[3] PSL §66-t(1)(d).

with the Department as otherwise specified in this proposal. However, Staff does not recommend that the individual employees of a registered energy broker or consultant must also register. In such a case, the employer's registration would cover its individual employees, contractors, and agents.

Additionally, the plain language of PSL §66-t(1)(c) & (d) make clear that the Legislature did not intend to cover only individuals acting on behalf of ESCOs and DER suppliers, but any entities that undertake the activities noted above. To be clear, the Department finds that the plain language of the definition of "energy broker" also applies to Community Choice Aggregation (CCA) administrators, as these entities act as brokers in procuring energy supply for communities, and to some DER suppliers or ESCOs that also act as brokers. The definition of "energy consultant" applies to any entities that provide consulting services to customers related to soliciting, negotiating, advising, or accepting on behalf of a customer a contract for electric or natural gas service. Depending on the service being provided, this definition potentially includes entities such as utility rate consultants, ESCOs, DER suppliers, and other entities that counsel customers regarding an electric or natural gas or distributed energy resources contract or act on a customer's behalf in accepting any electric or natural gas contract.

Finally, pursuant to L. 2022, ch. 787, the provisions of PSL §66-t are to take effect 180 days after enactment, or June 21, 2023. To ensure that energy brokers and consultants subject to PSL §66-t are provided with sufficient time to comply with its requirements, Staff proposes that brokers and consultants be given until August 31, 2023, to become fully registered with the Department.

ATTACHMENT A: REGISTRATION FORM

NEW YORK STATE OF OPPORTUNITY. Department of Public Service

ENERGY BROKER AND CONSULTANT REGISTRATION FORM

Pursuant to the Public Service Commission's XX Order Establishing Oversight Framework Case XX and to the Uniform Business Practices edits adopted in that order, Energy Brokers[1] and Consultants[2] are required to submit this form. Subsidiaries and partners, including contractors, subcontractors, special purpose entities, and tax equity investors, are not required to submit this form as long as a registered Energy Broker or Consultant is part of and responsible for ensuring compliance.

FILL OUT AND SUBMIT THIS FORM IN MATTER XX

IN THE MATTER OF REGISTRATION FOR ENERGY BROKERS AND CONSULTANTS[3]

(Attach additional sheets as necessary)

1. Business Information

Business Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Website: _____

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

[2] Energy Consultant is defined with in the UBP as "any person, firm, association or corporation who acts as broker in soliciting, negotiating or advising any electric or natural gas contract, or acts as an agent in accepting any electric or natural gas contract on behalf of an ESCO."

[3] Instructions on registering and filing are available at https://dps.ny.gov/dmm-help-electronic-filing-registration-instructions

If you intend to market your services under a DBA, provide a copy of your certificate of assumed name and list the name(s) here: _____

_____

Type of Provider:

Energy Broker_____ Energy Consultant _____ Both_____

Nature of business being conducted:

Type of customers: (Check all that apply)

Residential_____ Large Commercial_____
Industrial_____ Small Commercial_____

Provide the contact information for any affiliates conducting energy-related business (including subsidiaries and parent corporations) within New York State or elsewhere.

Business Name:_____

Contact Name:_____

Address:_____

City:_____State:_____Zip:_____

Telephone:_____Fax:_____

Email Address:_____

Provide the contact information for any parent company or other corporate entity with an ownership interest of 10 percent or more of the registrant:

Business Name:_____

Contact Name:_____

Address:_____

City:_____State:_____Zip:_____

Telephone:_____Fax:_____

Email Address:_____

During the previous 36 months, have any criminal or regulatory sanctions been imposed on the registrant, any senior officer of the registrant, any corporate entity with corporate entity with an ownership interest of 10 percent or any energy affiliates listed above?

Yes_____ No_____

If yes, identify the entities or individuals subject to sanctions and provide a detailed explanation of the sanctions:

_____
_____
_____
_____
_____
_____

Disclose any decisions or pending escalated regulatory actions in other states that affect the registrant's ability to operate in that state, such as suspension, revocation, or limitation of operating authority:

_____
_____
_____
_____
_____
_____

List and describe any current formal investigations involving the registrant being conducted by law enforcement or regulatory entities:

_____
_____
_____
_____
_____
_____

List and explain any acquisitions, mergers, dissolutions, or bankruptcy involving the registrant that occurred in the previous 36 months:

_____
_____
_____
_____
_____
_____

List and describe of any security breaches associated with customer proprietary information in the last 36 months that involved the registrant, including a thorough description of the actions taken in response to any such instances:

_____
_____
_____
_____
_____
_____

List all states in which the registrant has received authority to sell/broker services within the past 36 months. Indicate whether the registrant is actively providing services or not:

State: _____ Status: _____ Date Issued: _____
State: _____ Status: _____ Date Issued: _____
State: _____ Status: _____ Date Issued: _____
State: _____ Status: _____ Date Issued: _____
State: _____ Status: _____ Date Issued: _____
State: _____ Status: _____ Date Issued: _____

List all states in which registrant or its affiliates has been denied approval and/or had authority revoked:

_____
_____
_____
_____
_____
_____

List all municipalities in which the registrant is serving in New York State. Further provide an attachment including all municipality permits obtained by the registrant.

_____
_____
_____
_____
_____
_____

2. Contact Information

The contacts listed below must be direct contacts for individuals. ~~D~~irect phone numbers with extensions must be provided for each contact. No shared mailboxes will be accepted. Staff will not share these contacts with the general public.

Executive Contact (Owner, CEO, or Executive responsible for New York service)

Name and Title:_____

Address:_____

City:_____State:_____Zip:_____

Telephone:_____Fax:_____

Email Address:_____

Regulatory Contact (Individual(s) Responsible for Ensuring Compliance with Regulatory Requirements)

Name and Title:_____

Address:_____

City:_____State:_____Zip:_____

Telephone:_____Fax:_____

Email Address:_____

Marketing Contact (Individual(s) Responsible for Responding to Consumer Inquiries and Complaints)

Name and Title:_____

Address:_____

City:_____State:_____Zip:_____

Telephone:_____Fax:_____

Email Address:_____

3. Additional Requirements
(Required for New Registrants)

- A sample standard Sales Agreement;
- Sample forms of the notices sent upon assignment of sales agreements, discontinuance of service, or transfer of customers to other providers;
- Procedures used to obtain customer authorization for access to a customers' historic usage or credit information;
- Information on the methods by which the applicant intends to market energy products and services;
- Sample copies of informational and promotional materials that the applicant uses for mass marketing purposes;
- Sample disclosures of compensation;
- Proof of registration with the New York State Department of State;
- Proof of registration to act as a marketer in any municipality where such registration is required;
- An annual $500 registration fee;
- Proof of an irrevocable standby letter of credit held with a reputable financial institution that identifies that Department as the beneficiary in the amount of:
  - $100,000 for registering Energy Brokers; and
  - $50,000 for registering Energy Consultants;
- A completed Service Provider Contact Form, which can be found here, identifying the Energy Broker or Energy Consultant's employee(s) responsible for resolving consumer complaints received by the Department and referred to the Energy Broker or Energy Consultant

4. Signature

The person signing this application attests to the following: that she or he is an owner, partner, or officer of the business named on this registration package, the answers and materials contained in this registration package are true and the registration package submitted is complete and accurate. An Energy Broker or Consultant that knowingly makes false statements in this registration package is subject to denial or revocation of eligibility.

Signature:_____ Print Name:_____

Title:_____ Date:_____

Company Name:_____

ATTACHMENT B: ESCO UBP REDLINES

SECTION 1: DEFINITIONS

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

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

ESCO marketing representative – An entity that is either the ESCO, ~~or~~ a contractor/vendor, an Energy Broker, or Energy Consultant conducting, on behalf of the ESCO, any marketing activity that is designed to enroll customers with the ESCO.

SECTION 5: CHANGES IN SERVICE PROVIDERS

UBP Section 5.B.:

B. Customer Agreement

An ESCO, ~~or~~ its agent, an Energy Broker, or an Energy Consultant may solicit and enter into a sales agreement with a customer subject to the following requirements.

1. The ESCO, Energy Broker, or Energy Consultant shall obtain a customer agreement to initiate service and enroll a customer and customer authorization to release information to the ESCO by means of one of the following methods.

New UBP Section 5.B.4.k.

4. The standard Sales Agreements for each customer class shall include the following information written in plain language: . . .
   A. A disclosure of the form and amount of compensation provided to an Energy Broker or Energy Consultant if such compensation is collected through the ESCO customer agreement.

UBP Section 5.I.:

I. New Delivery Customers

1. A customer may initiate distribution utility delivery service and subsequently enter into a customer agreement with an ESCO for commodity supply or arrange for both services at the same time.
2. A customer may authorize an ESCO, Energy Broker, or Energy Consultant to act as the customer's agent ~~(ESCO agent)~~ in establishing distribution utility service. The ~~ESCO~~ agent shall retain, and produce upon request, documentation that the customer

authorized the ESCO, Energy Broker, or Energy Consultant to act as the customer's agent.

3. An ESCO, Energy Broker, or Energy Consultant acting as a customer's agent shall establish a new delivery account on behalf of the customer and enroll the customer with the distribution utility so that ESCO commodity service commences when distribution utility delivery service begins. The ESCO, Energy Broker, or Energy Consultant shall retain, and produce upon request, documentation that the customer authorized the ESCO, Energy Broker, or Energy Consultant to act as the customer's agent. An ESCO, Energy Broker, or Energy Consultant that is a customer's agent is authorized to submit the customer's application for new delivery service, in compliance with requirements for such applications stated in the law, rules and distribution utility tariffs. An ESCO, Energy Broker, or Energy Consultant shall provide the customer's name, service address and, if different, mailing address, telephone number, customer's requested service date for initiation of delivery service, and information about any special need customers, including any need for life support equipment. An ESCO, Energy Broker, or Energy Consultant shall refer a customer directly to a distribution utility for arrangement of distribution related matters, such as contribution-in-aid of construction and construction of facilities necessary to provide delivery service and settling of arrears and posting security.
4. Upon a customer's application for service, the distribution utility shall provide an ESCO, Energy Broker, or Energy Consultant with the effective date for initiation of delivery service and any other customer information provided to an ESCO, Energy Broker, or Energy Consultant in an acceptance of an enrollment request. The distribution utility may notify the customer of the acceptance.

UBP Section5, Attachment 1:

Telephonic Agreement and Authorization/Third Party Verification Requirements

A. A voice-recorded verification is required to enter into a telephonic agreement or a door to door agreement, with a customer to initiate service and begin enrollment. Use of either an Independent Third Party or an Integrated Voice Response system to obtain customer authorization is required for any telephone solicitation or sales resulting from door-to-door marketing. Verification by an Independent Third Party or an Integrated Voice Response system shall be recorded and conducted without the ESCO marketing representative, Energy Broker, or Energy Consultant's presence, either on the telephone or in person. A voice-recorded verification shall verify the following information to substantiate the customer's agreement or authorization:

B. The ESCO, ~~or~~ its agent, an Energy Broker, or an Energy Consultant shall provide a copy of any Customer Disclosure Statement and sales agreement to the customer by mail, e-mail or fax within three business days after the telephone agreement and independent third-party verification occurs. The sales agreement shall set forth the customer's rights and responsibilities and describe the offer in detail, including the specific prices, terms, and conditions of ESCO service. Such agreement shall be substantially the same, in form and content, as the sample contract submitted to the Department pursuant to Section 2.B.1.b.

D. An ESCO, Energy Broker, or Energy Consultant shall retain independent third-party verification records for two years from the effective date of the agreement and/or authorization or for the length of the sales agreement whichever is longer. In the event of any dispute involving agreement. authorization and/or the independent third-party verification, the ESCO, Energy Broker, or Energy Consultant shall make available the audio recording of the customer's agreement and/or authorization, including the independent third-party verification within five business days after a request from the Department.

UBP Section 5, Attachment 2:

Electronic Agreement and Authorization Requirements

A. To enter into an electronic agreement with a customer to initiate service and begin enrollment or to obtain customer authorization for release of information, an ESCO, ~~or~~ its agent, an Energy Broker, or an Energy Consultant shall electronically record communications with the potential customer. As required in Section 5, the Electronic Agreement and authorization may also require an independent third-party verification call, which must include the information in Attachment 1. An ESCO, Energy Broker, or Energy Consultant shall provide the following electronic information, as applicable, to substantiate the customer's agreement and/or authorization:

B. The ESCO, Energy Broker, or Energy Consultant shall, within three business days of any final agreement to initiate service to a customer, send an electronic confirmation notice to the customer at the customer's e-mail address.

C. The ESCO, Energy Broker, or Energy Consultant shall use an encryption standard that ensures the privacy of electronically transferred customer information, including information relating to enrollment, renewal, re-negotiation, and cancellation.

D. Upon request of a customer, the ESCO, Energy Broker, or Energy Consultant shall make available additional copies of the sales agreement throughout its duration. An ESCO, Energy Broker, or Energy Consultant shall provide a toll-free telephone number and e-mail address for a customer to request a copy of the sales agreement.

E. ~~An~~ ESCOs, Energy Brokers, and Energy Consultants shall retain documentation of a customer's agreement in a retrievable format for two years from the effective date of the customer's acceptance and/or authorization or for the length of the sales agreement whichever is longer. In the event of any dispute involving an electronic agreement or authorization, the ESCO, Energy Broker, or Energy Consultant shall provide a copy of the customer's acceptance of the sales agreement and/or authorization for release of information or provide on-line access to the acceptance and/or authorization within five calendar days after a request from the Department.

UBP Section 5, Attachment 3:

Written Agreement and Authorization Requirements

A. An ESCO, Energy Broker, or Energy Consultant may enter into a written agreement (original or fax copy of a signed document) with a customer to initiate service and begin enrollment or to obtain customer authorization for release of information. As required in Section 5, the Electronic Agreement and authorization may also require an independent

third-party verification call, which must include the information in Attachment 1. A sales agreement shall contain, in addition to the Customer Disclosure Statement discussed in UBP Section 2.B.1.b.2, the following information, as applicable:

B. ESCOs, Energy Brokers, or Energy Consultants shall retain written agreements and/or authorizations for two years from the effective date of the agreement and/or authorization or for the length of the agreement whichever is longer. In the event of any dispute involving a sales agreement or authorization, the ESCO, Energy Broker, or Energy Consultant shall provide a copy of the sales agreement and/or authorization within five business days after a request from the Department.

SECTION 8: DISPUTES INVOLVING DISTRIBUTION UTILITIES, ESCOS, ENERGY BROKERS/CONSULTANTS, OR DIRECT CUSTOMERS

UBP Section 8.A.:

A. Applicability

This Section describes the dispute resolution processes available at the Department to resolve disputes relating to competitive energy markets involving utilities, ESCOs and/or Direct Customers, including disputes alleging anti-competitive practices. This process shall also be utilized to resolve disputes between a distribution utility and an Energy Broker or Energy Consultant. The processes are not available to resolve disputes between retail customers and ESCOs or distribution utilities. 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 distribution utility, ESCO, Energy Broker, Energy Consultant, or Direct Customer to submit any dispute to another body for resolution.

UBP Section 8.B.1.:

1. Standard Process

The parties shall use a method to send documents described in this paragraph that will verify the date of receipt.

Any distribution utility, ESCO, Energy Broker, Energy Consultant, or Direct Customer may initiate a formal dispute resolution process by providing written notice to the opposing party and Department Staff. Such notice shall include a statement that the UBP dispute resolution process is initiated, a description of the dispute, and a proposed resolution with supporting rationale. Department Staff may participate in the process at this or any later point to facilitate the parties' discussions and to assist the parties in reaching a mutually acceptable resolution.

SECTION 10: MARKETING STANDARDS

UBP Section 10.C.4.:

4. Conduct
ESCOs shall:
h. Not contract with or otherwise do business with Energy Brokers and Energy Consultants that are not registered with the Commission pursuant to UBP Section 11. Customer enrollments facilitated by an unregistered Energy Broker or Energy Consultant shall be invalid.

New UBP Section 11:

SECTION 11: ENERGY BROKERS AND ENERGY CONSULTANTS

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

B. Registration Requirements
1. Applicants seeking to act as an Energy Broker or Energy Consultant in New York State are required to register with the Department by submitting a registration package containing the following information and attachments:
    a. A completed Energy Broker/Consultant Registration Form (Registration Form), available on the Department website (www.dps.ny.gov). The Registration Form shall require the applicant to:
        i. identify the name, postal and e-mail addresses, and telephone and fax numbers for the applicant's main office;
        ii. identify the names and addresses of any entities that hold ownership interests of 10% or more in the Energy Broker or Energy Consultant, including a contact name for corporate entities and partnerships;
        iii. identify the methods by which it intends to market energy products and services to customers;
        iv. identify the category/categories of energy products it intends to market to customers (e.g., commodity service, distributed solar, or demand response);
        v. disclose each state in which the applicant operates, or has operated, as an Energy Broker or Energy Consultant and provide any data in its possession regarding complaint history;
        vi. disclose any criminal or regulatory sanctions imposed during the previous 36 months against the applicant, any senior officers of the applicant, or any entities holding ownership interests of 10% or more in the applicant;
        vii. disclose any other trade names used by the applicant and the state in which the trade name was/is used;

viii. disclose and describe any data breaches associated with customer proprietary information that occurred in any jurisdiction within the 36 months preceding the date of registration, as well as any actions taken by the applicant in response to the incident(s);
ix. disclose and describe specific policies and procedures established by the applicant to secure customer data; and
x. disclose any history of bankruptcy, dissolution, merger, or acquisition activities in the 36 months preceding the date of registration, including data for affiliates of the Energy Broker or Energy Consultant applicant and upstream owners and subsidiaries.

b. A sample standard Sales Agreement;
c. Sample forms of the notices sent upon assignment of sales agreements, discontinuance of service, or transfer of customers to other providers;
d. Procedures used to obtain customer authorization for access to a customers' historic usage or credit information;
e. Sample copies of informational and promotional materials that the applicant uses for mass marketing purposes;
f. Sample disclosures of compensation;
g. Proof of registration with the New York State Department of State;
h. Proof of registration to act as a marketer in any municipality where such registration is required;
i. An annual $500 registration fee; and
j. Proof of an irrevocable standby letter of credit held with a reputable financial institution that identifies that Department as the beneficiary in the amount of:
    i. $100,000 for registering Energy Brokers; and
    ii. $50,000 for registering Energy Consultants;
k. A completed Service Provider Contact Form, which can be found on the Department's website http://www.dps.ny.gov, identifying the Energy Broker or Energy Consultant's employee(s) responsible for resolving consumer complaints received by the Department and referred to the Energy Broker or Energy Consultant;
l. An Officer Certification document sworn to by a high-level officer of the applicant, such as the Chief Executive Officer, President, or the equivalent, in which the officer affirms that the information contained in the registration package is accurate and truthful, and that the applicant is willing and able to comply with all applicable laws and regulations, including these UBPs.

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

C. Department Review Process

1. The Department shall review the Registration Form information and documentation submitted by each applicant and make a determination as to the applicant's likelihood of compliance with the Uniform Business Practices (UBP) if the applicant's registration was approved. To enable the Department to make a thorough assessment of a registration, an applicant shall notify the Department of any major changes in the information submitted in the Registration Form and/or registration package that occurs during the Department review process.
2. Following its review of the registration information and documentation, the Department shall advise the applicant, in writing, if the registration package is approved and the applicant is registered to operate in the State.
3. If following its review of the registration package information and documentation the Department determines that the applicant is not likely to comply with the UBP if the applicant were deemed eligible, the Department may recommend to the Commission that, for good cause shown, the Commission deny the applicant's registration.
4. In any instance that the Department recommends to the Commission that an applicant's registration be denied, the applicant shall be afforded an opportunity to provide the Commission with a response in rebuttal to the Department's recommendation and in support of its registration before the Commission renders a final determination.
5. The Department shall periodically review the registration packages of each Energy Broker and Energy Consultant operating in New York State and make a recommendation to the Commission if the Department finds that the Energy Broker or Energy Consultant should not be permitted to continue operating in New York State.

D. Maintaining and Updating Registration

1. On, or within 30 days prior to, the anniversary of the approval of its registration package, an Energy Broker or Energy Consultant shall submit:
    a. a statement that the information and attachments in its Registration Form and registration package are current; or
    b. a description of revisions to the Registration Form and registration package and a copy of the revised portions or, at the Energy Broker or Energy Consultant's option, a copy of the revised portions identifying the revisions by highlighting or other means;
    c. An Officer Certification document, as required by Sub-section B.1.l of this Section; and
    d. The required annual registration fee.
2. An Energy Broker or Energy Consultant shall submit at other times during the year:
    a. A description of any major change in the Registration Form and/or application package and a copy of the revised portions or, at the Energy Broker or Energy Consultant's option, a copy of the revised portions identifying the revisions by highlighting or other means. For purposes of this Section, the term, "major change," means a revision in the terms and conditions applicable to the

business relationship between the Energy Broker or Energy Consultant and its customers.

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

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

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

E. Marketing

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

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

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

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

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

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

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

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

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

ii. Produce identification, to be visible at all times thereafter, which: (1) prominently displays in reasonable size type face the first name and

employee identification number of the marketing representative; (2) displays a photograph of the marketing representative and depicts the legitimate trade name and logo of the entity they are representing; (3) provides the Energy Broker or Energy Consultant telephone number, or the telephone number of the third party on whose behalf the Energy Broker or Energy Consultant is marketing, for inquires, verification, and complaints.

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

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

v. Where it is apparent that the customer's English language skills are insufficient to allow the customer to understand and respond to the information conveyed by the Energy Broker or Energy Consultant or where the customer or another third party informs the Energy Broker or Energy Consultant of this circumstance, the Energy Broker or Energy Consultant shall either find a representative in the area who is fluent in the customer's language to continue the marketing activity in his/her stead, or terminate the in-person contact with the customer. The use of translation services and language identification cards is permitted.

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

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

retained by the Energy Broker or Energy Consultant for a minimum of six months.

viii. Specifically, when an Energy Broker or Energy Consultant markets on behalf of an ESCO:

1. An Energy Broker or Energy Consultant must provide each prospective residential customer or customer that is marketed to via door-to-door marketing, with a copy of the ESCO Consumers Bill of Rights, before the Energy Broker or Energy Consultant makes his or her sales presentation.
2. During the sales presentation, the marketing representative must also state that if customer purchases natural gas and/or electricity from the ESCO, that the customer's utility will continue to deliver their energy and will respond to any leaks or emergencies. This requirement may be fulfilled either (a) by an oral statement by the Energy Broker or Energy Consultant, or (b) written material left by the Energy Broker or Energy Consultant.
3. For any sale resulting from door-to-door marketing, each enrollment is only valid with an independent third-party verification in conformance with UBP Section 5, Attachment 1. The verification must occur after the Energy Broker or Energy Consultant has left the customer's premises and must be completed before the ESCO may enroll a customer.

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

i. Provide the Energy Broker or Energy Consultant's first name and, on request, the identification number;
ii. State the name of the third party on whose behalf the call is being made, if applicable;
iii. State the purpose of the telephone call;
iv. Explain that he or she does not represent the distribution utility.
v. Where it is apparent that the customer's English language skills are insufficient to allow the customer to understand and respond to the information conveyed by the Energy Broker or Energy Consultant or where the customer or another third party informs the Energy Broker or Energy Consultant of this circumstance, the Energy Broker or Energy Consultant will immediately transfer the customer to a representative who speaks the customer's language, if such a representative is available, or terminate the call;
vi. Remove Customers' names from the marketing database upon Customers' request.

vii. Provide any written materials, including but not limited to contracts, sales agreements, and marketing materials to the customer in the same language utilized to solicit the customer.

viii. Specifically, when an Energy Broker or Energy Consultant markets on behalf of an ESCO:

1. the Energy Broker or Energy Consultant must clearly indicate that taking service from an ESCO will not affect the customer's distribution service and such service will continue to be provided by the customer's distribution utility;
2. the Energy Broker or Energy Consultant must notify each prospective residential customer of the ESCO Consumer Bill of Rights, where they can find it, and also provide a copy of the ESCO Consumer Bill of Rights with any written material sent to the customer including the sales agreement;
3. For any sale resulting from telephonic marketing, each enrollment is only valid with an independent third-party verification in conformance with Section 5, Attachment 1. The verification must be completed before the ESCO may enroll a customer.

d. Electronic Enrollments

i. When marketing to residential customers on behalf of an ESCO, the ESCO Consumer Bill of Rights should be provided to prospective customers as a non-avoidable screen, which a customer must affirmatively acknowledge to verify they have seen the document, prior to effecting an enrollment.

e. Conduct when Marketing: Energy Brokers and Energy Consultants shall:

i. Not engage in misleading or deceptive conduct as defined by State or federal law, or by Commission rule, regulation, or Order;

ii. Not make false or misleading representations including misrepresenting rates or savings of certain energy products and services;

iii. Provide the customer with written information, upon request, or with a website address at which information can be obtained, if the customer requests such information via the internet;

iv. Use reasonable efforts to provide accurate and timely information about services and products. Such information will include information about rates, contract terms, early termination fees, and right of cancellation consistent with this Section, UBP Section 2, and any other relevant Section;

v. Ensure that any product or service offerings marketed by an Energy Broker or Energy Consultant contain information written in plain language that is designed to be understood by the customer. This shall include providing any written information to the customer in a

language in which the Energy Broker or Energy Consultant has substantive discussions with the customer or in which a contract is negotiated;

vi. Investigate customer inquiries and complaints concerning marketing practices within five days of receipt of the complaint; and,

vii. Cooperate with the Department and Commission regarding marketing practices proscribed by the UBP and with local law enforcement in investigations concerning deceptive marketing practices.

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

2. Disclosure of compensation
   a. Energy Brokers and Energy Consultants shall disclose to customers the form and amount of compensation via a conspicuous statement on any contract or agreement between the energy agent, consultant, broker, or intermediary and its customer.
   b. All such disclosures shall include any dollar amount paid, the form in which the compensation was given to the Energy Broker or Energy Consultant, the entity which made the payment, and any broker fee or margin which was added to the energy product or service the customer enrolled in. This disclosure must include anything of value that was given as compensation to the Energy Broker or Energy Consultant for their work, including commissions, bonuses, and any non-financial compensation.
   c. In instances where the Energy Broker or Energy Consultant has a direct contractual relationship with the customer, this disclosure shall be included on the first page of the customer agreement, must be in plain language, and appear in 12-point font size or larger.
   d. If a third party, such as an ESCO or DERS, collects compensation on behalf of the Energy Broker or Energy Consultant, such compensation shall be added to the Customer Disclosure Statement in the third party's customer agreement and reflect the amount and method. In this instance, the Energy Broker or Energy Consultant shall still disclose this information at the time of marketing to the customer.
3. Prohibition on Rebates
   a. Energy Brokers, Energy Consultants, or any person acting on behalf of the broker or consultant are prohibited from offering or making, directly or indirectly, any rebate of any portion of the fee, premium, or charge made, or from paying or giving to any entity acting as a representative of the energy rate payer, either directly or indirectly, any commission, any part of its fees or charges, or any other consideration or valuable thing, as an inducement or compensation for any energy supply or energy-related business.

i. Energy Brokers, Energy Consultants, or any entity acting as a representative of the energy rate payer or of the prospective energy rate payer, or anyone having any interest in the real property are prohibited from knowingly receiving, directly or indirectly, any such rebate or other consideration or valuable thing.

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

F. Customer Inquires

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

3. Specific Requests for Information
   a. An Energy Broker or Energy Consultant shall respond directly to customer inquiries for any information that is related to commodity supply and/or delivery service, to the extent it has the necessary information to respond.
   b. The entity responsible for the accuracy of meter readings shall respond to customer inquiries related to usage.
   c. The distribution utility and ESCO shall respond to customer inquiries about billing and payment processing, in accordance with UBP Section 9, Billing and Payment Processing.
4. Emergency Contacts
   a. An emergency call means any communication from a customer concerning an emergency situation relating to the distribution system, including, but not limited to, reports of gas odor, natural disaster, downed wires, electrical contact, or fire.
   b. If contacted with an emergency telephone call, the Energy Broker or Energy Consultant CSR shall transfer emergency telephone calls directly to the distribution utility or provide the distribution utility's emergency number for direct contact to the distribution utility. If no Energy Broker or Energy Consultant CSR is available, the Energy Broker or Energy Consultant shall provide for after-hours emergency contacts, including transfer of emergency calls directly to a distribution utility or an answering machine message that includes an emergency number for direct contact to the distribution utility.

G. Customer Data
1. Energy Brokers and Energy consultants must protect against the unauthorized disclosure of confidential customer information.
2. Energy Brokers and Energy Consultants are prohibited from selling, disclosing or providing any customer information obtained from a distribution utility or from the customer themselves to others, including their affiliates, unless such sale, disclosure or provision is required to facilitate or maintain service to the customer, or is specifically authorized by the customer, or required by legal authority. If such authorization is requested from the customer, the Energy Broker and Energy Consultant shall, prior to authorization, describe to the customer the information it intends to release and the recipient of the information.
3. NIST Cybersecurity Framework. Energy Brokers and Energy Consultants that obtain customer information from the distribution utility must have processes and procedures in place regarding cybersecurity consistent with the National Institute of Standards and Technology Cybersecurity Framework.
4. Data Security. Energy Brokers and Energy Consultants that obtain customer information from the distribution utility must comply with any data security requirements imposed by that utility or by Commission rules.

H. Enforcement
1. An Energy Broker or Energy Consultant may be subject to enforcement for reasons, including, but not limited to:
   a. false or misleading information in the registration package;

b. failure to adhere to the policies and procedures described in any contract with customers;
c. failure to comply with required customer protections;
d. failure to comply with applicable New York Independent System Operator (NYISO) requirements, reporting requirements, or Department oversight requirements;
e. failure to provide notice to the Department of any material changes in the information contained in the Registration Form or registration package;
f. failure to comply with the UBP terms and conditions, including discontinuance requirements;
g. failure to comply with the Commission's Environmental Disclosure Requirements or failure to comply with other Commission Orders, Rules, or Regulations;
h. failure to reply to a complaint filed with the Department and referred to the Energy Broker or Energy Consultant within the timeframe established by the Department' Office of Consumer Services which is not less than five days;
i. a material pattern of consumer complaints on matters within the Energy Broker or Energy Consultant's control;
j. failure to comply with any federal, state, or local laws, rules, or regulations related to sales or marketing; or 'No Solicitation' signage on the premises; or
k. failure to comply with any of the Marketing Standards set forth in Section 10 of the UBP.

2. In determining the appropriate enforcement action for a failure or non-compliance in one or more of the categories set forth in this Section, the Commission or Department may take into account the nature, the circumstances, including the scope of harm to individual customers, and the gravity of the failure or non- compliance, as well as the Energy Broker or Energy Consultant's history of previous violations.
    a. Enforcement Procedures:
        i. The Commission or Department shall either: (a) notify the Energy Broker or Energy Consultant in writing of its failure to comply and request that the Energy Broker or Energy Consultant take appropriate corrective action or provide remedies within the directed cure period, which will be based on a reasonable amount of time given the nature of the issue to be cured; or (b) order that the Energy Broker or Energy Consultant show cause why a civil penalty or other sanction should not be imposed.
        ii. The Commission may impose the sanctions listed in UBP Sub-section H.2.b. of this Section if (a) Energy Broker or Energy Consultant fails to take corrective actions or provide remedies within the cure period; or (b) the Commission determines that the incident or incidents of non-compliance are substantiated and the sanction is appropriate.

iii. Consequences shall not be imposed until after the Energy Broker or Energy Consultant is provided notice and an opportunity to respond.
iv. Notwithstanding the requirements of Sub-sections i., ii., and iii. of this paragraph, an Energy Broker or Energy Consultant is subject to revocation of its registration if it fails to provide the required annual registration fee.
v. The notice of sanctions imposed by the Commission will be published on the Department's website.

b. Sanction for non-compliance in one or more of the categories set forth in this Section may include one or more of the following restrictions on an Energy Broker or Energy Consultant's opportunity to do business as an Energy Broker or Energy Consultant in New York State:
i. Suspension from a specific Commission approved program in either a specific service territory or all territories in New York State;
ii. Suspension of the ability to enroll new customers in either a specific service territory or all service territories in New York State;
iii. Imposition of a requirement to record all telephonic and door-to-door marketing presentations, which shall be made available to the Department for review;
iv. Reimbursements to customers who did not receive savings promised in the Energy Broker or Energy Consultant's sales agreement/Customer Disclosure Statement or included in the Energy Broker or Energy Consultant's marketing presentation, or to customers who incurred costs as a result of the Energy Broker or Energy Consultant's failure to comply with the marketing standards set forth in UBP Section 10;
v. Release of customers from sales agreements without imposition of early termination fees;
vi. Revocation of an Energy Broker or Energy Consultant's registration and ability to operate in New York State; and,
vii. Any other measures that the Commission may deem appropriate.

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

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

4. The Department shall maintain a list of registered Energy Brokers and Energy Consultants for the benefit of third parties who do business with such Energy Brokers and Energy Consultants. As stated in UBP Section 10, ESCOs are prohibited from doing business with unregistered Energy Brokers and Energy Consultants.

ATTACHMENT C: UBP-DERS REDLINES

SECTION 1: DEFINITIONS

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

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

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

SECTION 2: GENERAL MARKETING STANDARDS (Generally Applicable)

A. DER Supplier Shall:
   9. Not contract with or otherwise do business with Energy Brokers and Energy Consultants that are not registered with the Commission pursuant to UBP-DERS Section 4. Customer enrollments facilitated by an unregistered Energy Broker or Energy Consultant shall be invalid.

SECTION 4: ENERGY BROKERS AND ENERGY CONSULTANTS

I. Applicability

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

J. Registration Requirements

4. Applicants seeking to act as an Energy Broker or Energy Consultant in New York State are required to register with the Department by submitting a registration package containing the following information and attachments:
   a. A completed Energy Broker/Consultant Registration Form (Registration Form), available on the Department website (www.dps.ny.gov). The Registration Form shall require the applicant to:
      i. identify the name, postal and e-mail addresses, and telephone and fax numbers for the applicant's main office;

ii. identify the names and addresses of any entities that hold ownership interests of 10% or more in the Energy Broker or Energy Consultant, including a contact name for corporate entities and partnerships;
iii. identify the methods by which it intends to market energy products and services to customers;
iv. identify the category/categories of energy products it intends to market to customers (e.g. commodity service, distributed solar, or demand response);
v. disclose each state in which the applicant operates, or has operated, as an Energy Broker or Energy Consultant and provide any data in its possession regarding complaint history;
vi. disclose any criminal or regulatory sanctions imposed during the previous 36 months against the applicant, any senior officers of the applicant, or any entities holding ownership interests of 10% or more in the applicant;
vii. disclose any other trade names used by the applicant and the state in which the trade name was/is used;
viii. disclose and describe any data breaches associated with customer proprietary information that occurred in any jurisdiction within the 36 months preceding the date of registration, as well as any actions taken by the applicant in response to the incident(s);
ix. disclose and describe specific policies and procedures established by the applicant to secure customer data; and
x. disclose any history of bankruptcy, dissolution, merger, or acquisition activities in the 36 months preceding the date of registration, including data for affiliates of the Energy Broker or Energy Consultant applicant and upstream owners and subsidiaries.

b. A sample standard Sales Agreement;
c. Sample forms of the notices sent upon assignment of sales agreements, discontinuance of service, or transfer of customers to other providers;
d. Procedures used to obtain customer authorization for access to a customers' historic usage or credit information;
e. Sample copies of informational and promotional materials that the applicant uses for mass marketing purposes;
f. Sample disclosures of compensation;
g. Proof of registration with the New York State Department of State;
h. Proof of registration to act as a marketer in any municipality where such registration is required;
i. An annual $500 registration fee; and
j. Proof of an irrevocable standby letter of credit held with a reputable financial institution that identifies that Department as the beneficiary in the amount of:
    i. $100,000 for registering Energy Brokers; and
    ii. $50,000 for registering Energy Consultants;
k. A completed Service Provider Contact Form, which can be found on the Department's website http://www.dps.ny.gov, identifying the Energy Broker or Energy Consultant's employee(s) responsible for resolving consumer

complaints received by the Department and referred to the Energy Broker or Energy Consultant;

l. An Officer Certification document sworn to by a high-level officer of the applicant, such as the Chief Executive Officer, President, or the equivalent, in which the officer affirms that the information contained in the registration package is accurate and truthful, and that the applicant is willing and able to comply with all applicable laws and regulations, including these UBPs.

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

K. Department Review Process

1. The Department shall review the Registration Form information and documentation submitted by each applicant and make a determination as to the applicant's likelihood of compliance with the Uniform Business Practices (UBP) if the applicant's registration was approved. To enable the Department to make a thorough assessment of a registration, an applicant shall notify the Department of any major changes in the information submitted in the Registration Form and/or registration package that occurs during the Department review process.
2. Following its review of the registration information and documentation, the Department shall advise the applicant, in writing, if the registration package is approved and the applicant is registered to operate in the State.
3. If following its review of the registration package information and documentation the Department determines that the applicant is not likely to comply with the UBP if the applicant were deemed eligible, the Department may recommend to the Commission that, for good cause shown, the Commission deny the applicant's registration.
4. In any instance that the Department recommends to the Commission that an applicant's registration be denied, the applicant shall be afforded an opportunity to provide the Commission with a response in rebuttal to the Department's recommendation and in support of its registration before the Commission renders a final determination.
5. The Department shall periodically review the registration packages of each Energy Broker and Energy Consultant operating in New York State and make a recommendation to the Commission if the Department finds that the Energy Broker or Energy Consultant should not be permitted to continue operating in New York State.

L. Maintaining and Updating Registration

1. On, or within 30 days prior to, the anniversary of the approval of its registration package, an Energy Broker or Energy Consultant shall submit:
    a. a statement that the information and attachments in its Registration Form and registration package are current; or
    b. a description of revisions to the Registration Form and registration package and a copy of the revised portions or, at the Energy Broker or Energy Consultant's option, a copy of the revised portions identifying the revisions by

highlighting or other means;
c. An Officer Certification document, as required by Sub-section B.1.l of this Section; and
d. The required annual registration fee.

2. An Energy Broker or Energy Consultant shall submit at other times during the year:
a. A description of any major change in the Registration Form and/or application package and a copy of the revised portions or, at the Energy Broker or Energy Consultant's option, a copy of the revised portions identifying the revisions by highlighting or other means. For purposes of this Section, the term, "major change," means a revision in the terms and conditions applicable to the business relationship between the Energy Broker or Energy Consultant and its customers.
b. Changes in marketing plans, including changes to the list required in Sub-section B.1.a.iii of this Section.
c. Changes in the Energy Broker or Energy Consultant's business and customer service information displayed on the Department's Website.
d. Changes in personnel responsible for resolving consumer complaints received by the Department and referred to the Energy Broker or Energy Consultant.

M. Marketing
1. This sub-section describes the standards that Energy Brokers and Energy Consultants must follow when marketing to customers in New York State. Nothing in this Section shall be read to modify or remove the marketing standards contained in UBP Section 10.
a. Energy Brokers and Energy Consultants shall ensure that the training of their employees and/or marketing representatives includes:
i. Knowledge of this Section and awareness of the other Sections of the UBP;
ii. Knowledge of the products and services for which the Energy Broker or Energy Consultant is marketing;
iii. Knowledge of product rates/cost, payment options and the customers' right to cancel, including the applicability of an early termination fee;
iv. Knowledge of the applicable provisions of the Home Energy Fair Practices Act that pertains to residential customers; and,
v. The ability to provide the customer with a toll-free number from which the customer may obtain information about the Energy Broker or Energy Consultant's mechanisms for handling billing questions, disputes, and complaints.
b. In-Person Contact with Customers: Energy Brokers or Energy Consultants who contact customers in person at a location other than the Energy Broker or Energy Consultant's place of business, or the place of business of the third party on whose behalf the Energy Broker or Energy Consultant is marketing, for the purpose of selling any product or service offered by the Energy Broker or Energy Consultant, or offered by the third party on whose behalf the Energy Broker or Energy Consultant is marketing, shall, before making any other statements or representations to the customer:

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

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

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

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

v. Where it is apparent that the customer's English language skills are insufficient to allow the customer to understand and respond to the information conveyed by the Energy Broker or Energy Consultant or where the customer or another third party informs the Energy Broker or Energy Consultant of this circumstance, the Energy Broker or Energy Consultant shall either find a representative in the area who is fluent in the customer's language to continue the marketing activity in his/her stead, or terminate the in-person contact with the customer. The use of translation services and language identification cards is permitted.

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

vii. All Energy Brokers or Energy Consultants conducting door-to-door marketing must maintain a daily record, by zip code, of the

territories in which the Energy Broker or Energy Consultant has conducted door-to-door marketing. This information should be in a form that can be reported to Staff upon request and should be retained by the Energy Broker or Energy Consultant for a minimum of six months.

c. Telephone Contact with Customers: Energy Brokers and Energy Consultants who contact customers by telephone for the purpose of selling any product or service shall:
   i. Provide the Energy Broker or Energy Consultant's first name and, on request, the identification number;
   ii. State the name of the third party on whose behalf the call is being made, if applicable;
   iii. State the purpose of the telephone call;
   iv. Explain that he or she does not represent the distribution utility.
   v. Where it is apparent that the customer's English language skills are insufficient to allow the customer to understand and respond to the information conveyed by the Energy Broker or Energy Consultant or where the customer or another third party informs the Energy Broker or Energy Consultant of this circumstance, the Energy Broker or Energy Consultant will immediately transfer the customer to a representative who speaks the customer's language, if such a representative is available, or terminate the call;
   vi. Remove Customers' names from the marketing database upon Customers' request.
   vii. Provide any written materials, including but not limited to contracts, sales agreements, and marketing materials to the customer in the same language utilized to solicit the customer.
d. Conduct when Marketing: Energy Brokers and Energy Consultants shall:
   i. Not engage in misleading or deceptive conduct as defined by State or federal law, or by Commission rule, regulation, or Order;
   ii. Not make false or misleading representations including misrepresenting rates or savings of certain energy products and services;
   iii. Provide the customer with written information, upon request, or with a website address at which information can be obtained, if the customer requests such information via the internet;
   iv. Use reasonable efforts to provide accurate and timely information about services and products. Such information will include information about rates, contract terms, early termination fees, and right of cancellation consistent with this Section, UBP Section 2, and any other relevant Section;
   v. Ensure that any product or service offerings marketed by an Energy Broker or Energy Consultant contain information written in plain language that is designed to be understood by the customer. This shall include providing any written information to the customer in a language in which the Energy Broker or Energy Consultant has

substantive discussions with the customer or in which a contract is negotiated;

vi. Investigate customer inquiries and complaints concerning marketing practices within five days of receipt of the complaint; and,

vii. Cooperate with the Department and Commission regarding marketing practices proscribed by the UBP and with local law enforcement in investigations concerning deceptive marketing practices.

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

2. Disclosure of compensation
   a. Energy Brokers and Energy Consultants shall disclose to customers the form and amount of compensation via a conspicuous statement on any contract or agreement between the energy agent, consultant, broker, or intermediary and its customer.
   b. All such disclosures shall include any dollar amount paid, the form in which the compensation was given to the Energy Broker or Energy Consultant, the entity which made the payment, and any broker fee or margin which was added to the energy product or service the customer enrolled in. This disclosure must include anything of value that was given as compensation to the Energy Broker or Energy Consultant for their work, including commissions, bonuses, and any non-financial compensation.
   c. In instances where the Energy Broker or Energy Consultant has a direct contractual relationship with the customer, this disclosure shall be included on the first page of the customer agreement, must be in plain language, and appear in 12-point font size or larger.
   d. If a third party, such as an ESCO or DERS, collects compensation on behalf of the Energy Broker or Energy Consultant, such compensation shall be added to the Customer Disclosure Statement in the third party's customer agreement and reflect the amount and method. In this instance, the Energy Broker or Energy Consultant shall still disclose this information at the time of marketing to the customer.
3. Prohibition on Rebates
   a. Energy Brokers, Energy Consultants, or any person acting on behalf of the broker or consultant are prohibited from offering or making, directly or indirectly, any rebate of any portion of the fee, premium, or charge made, or from paying or giving to any entity acting as a representative of the energy rate payer, either directly or indirectly, any commission, any part of its fees or charges, or any other consideration or valuable thing, as an inducement or compensation for any energy supply or energy-related business.
      i. Energy Brokers, Energy Consultants, or any entity acting as a representative of the energy rate payer or of the prospective energy rate payer, or anyone having any interest in the real property are prohibited from knowingly receiving, directly or indirectly, any such

rebate or other consideration or valuable thing.

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

N. Customer Inquires

1. This sub-section establishes requirements for responses by an Energy Broker or Energy Consultant to retail access customer inquiries. An Energy Broker or Energy Consultant shall respond to customer inquiries sent by means of electronic mail, telecommunication services, mail, or in meetings. The subjects raised in inquiries may result in the filing of complaints.
2. General Requirements:
   a. Energy Brokers and Energy Consultants shall provide consistent and fair treatment to customers.
   b. Energy Brokers and Energy Consultants shall maintain processes and procedures to resolve customer inquiries without undue discrimination and in an efficient manner and provide an acknowledgement or response to a customer inquiry within 2 days and, if only an acknowledgement is provided, a response within 14 days.
   c. Energy Brokers and Energy Consultants shall provide local or toll-free telephone access from the customer's service area to customer service representatives (CSRs) responsible for responding to customer inquiries and complaints. This shall either be the local or toll-free telephone number of the Energy Broker or Energy Consultant or the local or toll-free telephone number of the third-party on whose behalf of the Energy Broker or Energy Consultant is marketing.
   d. CSRs shall obtain information from the customer to access and verify the account or premises information. Once verification is made, the CSR shall determine the nature of the inquiry, and, based on this determination, decide whether the distribution utility, the ESCO, or the Energy Broker/Consultant is responsible for assisting the customer.
   e. The CSR shall follow normal procedures for responding to inquiries. If the inquiry is specific to another provider's service, the CSR shall take one of the following actions:
      i. Forward/transfer the inquiry to the responsible party;
      ii. Direct the customer to contact the responsible party; or,
      iii. Contact the responsible party to resolve the matter and provide a response to the customer.
   f. Energy Brokers and Energy Consultants may provide a teletypewriter (TTY) system or access to TTY number, consistent with distribution utility tariffs.
3. Specific Requests for Information
   a. An Energy Broker or Energy Consultant shall respond directly to customer inquiries for any information that is related to commodity supply and/or delivery service, to the extent it has the necessary information to respond.
   b. The entity responsible for the accuracy of meter readings shall respond to customer inquiries related to usage.
4. Emergency Contacts

a. An emergency call means any communication from a customer concerning an emergency situation relating to the distribution system, including, but not limited to, reports of gas odor, natural disaster, downed wires, electrical contact, or fire.
b. If contacted with an emergency telephone call, the Energy Broker or Energy Consultant CSR shall transfer emergency telephone calls directly to the distribution utility or provide the distribution utility's emergency number for direct contact to the distribution utility. If no Energy Broker or Energy Consultant CSR is available, the Energy Broker or Energy Consultant shall provide for after-hours emergency contacts, including transfer of emergency calls directly to a distribution utility or an answering machine message that includes an emergency number for direct contact to the distribution utility.

O. Customer Data
1. Energy Brokers and Energy consultants must protect against the unauthorized disclosure of confidential customer information.
2. Energy Brokers and Energy Consultants are prohibited from selling, disclosing or providing any customer information obtained from a distribution utility or from the customer themselves to others, including their affiliates, unless such sale, disclosure or provision is required to facilitate or maintain service to the customer, or is specifically authorized by the customer, or required by legal authority. If such authorization is requested from the customer, the Energy Broker and Energy Consultant shall, prior to authorization, describe to the customer the information it intends to release and the recipient of the information.
3. NIST Cybersecurity Framework. Energy Brokers and Energy Consultants that obtain customer information from the distribution utility must have processes and procedures in place regarding cybersecurity consistent with the National Institute of Standards and Technology Cybersecurity Framework.
4. Data Security. Energy Brokers and Energy Consultants that obtain customer information from the distribution utility must comply with any data security requirements imposed by that utility or by Commission rules.

P. Enforcement
1. An Energy Broker or Energy Consultant may be subject to consequences for reasons, including, but not limited to:
a. false or misleading information in the registration package;
b. failure to adhere to the policies and procedures described in any contract with customers;
c. failure to comply with required customer protections;
d. failure to comply with applicable New York Independent System Operator (NYISO) requirements, reporting requirements, or Department oversight requirements;
e. failure to provide notice to the Department of any material changes in the information contained in the Registration Form or registration package;
f. failure to comply with the UBP terms and conditions, including discontinuance requirements;
g. failure to comply with the Commission's Environmental Disclosure Requirements or failure to comply with other Commission Orders, Rules, or

Regulations;

h. failure to reply to a complaint filed with the Department and referred to the Energy Broker or Energy Consultant within the timeframe established by the Department' Office of Consumer Services which is not less than five days;
i. a material pattern of consumer complaints on matters within the Energy Broker or Energy Consultant's control;
j. failure to comply with any federal, state, or local laws, rules, or regulations related to sales or marketing; or 'No Solicitation' signage on the premises; or
k. failure to comply with any of the Marketing Standards set forth in Section 10 of the UBP.

2. In determining the appropriate consequence for a failure or non-compliance in one or more of the categories set forth in this Section, the Commission or Department may take into account the nature, the circumstances, including the scope of harm to individual customers, and the gravity of the failure or non- compliance, as well as the Energy Broker or Energy Consultant's history of previous violations.
    a. Enforcement Procedures:
        i. The Commission or Department shall either: (a) notify the Energy Broker or Energy Consultant in writing of its failure to comply and request that the Energy Broker or Energy Consultant take appropriate corrective action or provide remedies within the directed cure period, which will be based on a reasonable amount of time given the nature of the issue to be cured; or (b) order that the Energy Broker or Energy Consultant show cause why a consequence should not be imposed.
        ii. The Commission may impose the consequences listed in UBP Section H.2.b. if (a) Energy Broker or Energy Consultant fails to take corrective actions or provide remedies within the cure period; or (b) the Commission determines that the incident or incidents of non-compliance are substantiated and the consequence is appropriate.
        iii. Consequences shall not be imposed until after the Energy Broker or Energy Consultant is provided notice and an opportunity to respond.
        iv. Notwithstanding the requirements of sub-sections i., ii., and iii. of this paragraph, an Energy Broker or Energy Consultant is subject to immediate revocation of its registration if it fails to provide the required annual registration fee.
        v. The notice of consequences imposed by the Commission will be published on the Department's website.
    b. Consequences for non-compliance in one or more of the categories set forth in this Section may include one or more of the following restrictions on an Energy Broker or Energy Consultant's opportunity to do business as an Energy Broker or Energy Consultant in New York State:
        i. Suspension from a specific Commission approved program in either a specific service territory or all territories in New York State;
        ii. Suspension of the ability to enroll new customers in either a specific service territory or all service territories in New York State;
        iii. Imposition of a requirement to record all telephonic and door-to-door

marketing presentations, which shall be made available to the Department for review;

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

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

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

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

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

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

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