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June 3, 2024

Via e-filing

Hon. Michelle L. Phillips
Secretary to the Commission
New York State Public Service Commission
Empire State Plaza
Agency Building 3
Albany, NY 12223-1350

Re: ***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

Dear Secretary Phillips:

The New York Retail Choice Coalition (“NYRCC” or “Coalition”)¹ intends to commence a CPLR Article 78 proceeding (“Article 78 Petition”) challenging the Commission’s decisions in the April 18, 2024, *Declaratory Ruling and Order on Rehearing* (“Rehearing Order”) and the underlying June 23, 2023, *Order Adopting Energy Broker and Energy Consultant Registration Requirements*. To ensure the fair, orderly, and efficient management of this process, it is essential to extend the 60-day effective date of the rule changes adopted in the Rehearing Order while the Article 78 Petition is under review. Accordingly, pursuant to Ordering Paragraph 11 of the Rehearing Order,² the NYRCC requests an extension of the following deadlines³ until 60 days after a decision on the Article 78 Petition is issued by the court:

¹ The Coalition represents the interests of ESCOs, DERs and energy consultants/brokers, many of whom conduct their primary business in New York. The Coalition seeks to strengthen New York’s competitive energy markets, preserve customer choice, and ensure an equal playing field for all ESCOs and energy consultants/brokers active in the New York retail choice marketplace. The comments expressed in this filing represent the NYRCC’s position as a coalition and may not represent the views of individual entities participating in the Coalition.

² See 16 NYCRR § 3.3 (b)(1).

³ The NYRCC submits this request pursuant to 16 NYCRR § 3.3(b)(1) and Ordering Paragraph 11 of the Rehearing Order (“In the Secretary’s sole discretion, the deadlines set forth this Order may be extended. Any request for an extension must be in writing, must include a justification for the extension, and must be filed at least three days prior to the affected deadline.”).

- The effective date of ESCO Uniform Business Practices (“ESCO UBP”) and Uniform Business Practices for Distributed Energy Resource Suppliers (“DER UBP”) revisions, as described in Ordering Paragraph 3.
- The deadline for utilities to file tariff amendments or addenda that incorporate the UBP revisions, as outlined in Ordering Paragraph 4.
- The date energy brokers and energy consultants are required to comply with the ESCO UBP and DER UBP, as designated in Ordering Paragraph 6.
- The deadline for energy brokers and energy consultants to register with the Public Service Commission, as stated under Ordering Paragraph 7.
- The deadline for ESCOs and DER suppliers to update their customer sales agreements to include the disclosure of energy broker or energy consultant compensation, as detailed under Ordering Paragraph 9.

The Coalition also supports delaying the current deadline of 120 days from the effective date of the Rehearing Order for Staff to review registration packages, as described in Ordering Paragraph 10, consistently with any extension granted for the registration deadline.

Additionally, the NYRCC supports the extension request submitted by Family Energy, Inc. as outlined in its filing dated May 28, 2024. We believe that its request for a 90-day compliance extension is reasonable and highlights the complexity and substantial burden the new requirements impose on all industry stakeholders. Aligning our efforts with Family Energy’s position reinforces the industry’s unified call for a more manageable timeline to implement these significant regulatory changes.

The Rehearing Order substantially modifies the regulatory framework governing New York’s retail choice market, primarily by instituting a mandatory registration system for energy brokers and consultants. Such registration requires submission of specific information, payment of a \$500 annual fee, and, notably, the posting of a substantial irrevocable standby letter of credit—\$100,000 for brokers and \$50,000 for consultants. Additionally, the Rehearing Order enforces transparency by mandating that brokers and consultants disclose their compensation to customers and compelling ESCOs to revise customer agreements to include these disclosures. The implementation of these changes will enhance market oversight and consumer protection, which aligns with the Coalition’s long-standing advocacy for regulated market conduct to mitigate prior abuses that escalated service costs.

The Coalition, since its inception in 2015, has advocated for light regulation of agents, brokers, and consultants in the New York retail choice market. Indeed, the Coalition supports registration requirements to curb the detrimental effects unregulated parties have had on the market, which inflated commodity ratepayers’ service costs. However, while the Coalition supports the underlying objectives of the legislation to enhance accountability and transparency in the market, it contends that specific provisions of the Rehearing Order, particularly around financial accountability measures, deviate unnecessarily from the legislated framework. In its forthcoming Article 78 Petition, the Coalition will argue that the Rehearing Order’s revisions to the ESCO UBP and DER UBP implementing new section 66-t of the Public Service Law do not

fully align with new section 66-t, notably in restricting the required demonstration of financial accountability to letters of credit although the law explicitly calls for bonds.⁴

In anticipation of the Article 78 proceeding and to avert the significant disruption that would result from enforcing the Rehearing Order, the NYRCC requests that the Secretary grant the proposed extension. Such a move would align with previous decisions by the Commission Secretary to maintain current regulatory conditions during review of Commission orders.⁵

For the above-mentioned reason, the NYRCC respectfully requests an extension of the deadlines in Ordering Paragraphs 3, 4, 6, 7, and 9 of the Rehearing Order until 60 days after the court has issued a ruling on the anticipated Article 78 Petition. The NYRCC appreciates your consideration of this request and recognizes the need to balance prompt implementation with ensuring readiness for the new regulations. Therefore, the NYRCC respectfully asks for a decision on this request by June 7, 2024.

If you have any questions about this request, please contact me directly using the information provided below. Thank you for your attention to this request.

Sincerely,

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Counsel to the New York Retail Choice Coalition

⁴NY C.P.L.R. Pub. Serv. § 66-t, section 3 (2024) (“energy broker demonstrates financial accountability as evidenced by a bond or other method of financial accountability in an amount not less than one hundred thousand dollars; and (ii) energy consultant demonstrates financial accountability as evidenced by a bond or other method of financial accountability in an amount not less than fifty thousand dollars”).

⁵ See Case No. 20-M-0446, *Proceeding on Motion of the Commission to Impose Consequences against Josco Energy Corp for Violations of the Uniform Business Practices*, Ruling Granting Extension Request (issued August 23, 2022)(granting extension of deadlines during pendency of Article 78 Petition). See Case 20-M-0589, *Proceeding on Motion of the Commission to Seek Consequences against SunSea Energy, LLC for Violations of the Uniform Business Practices*, Ruling on Extension Request (issued July 6, 2023) (granting a request for an extension of time to comply with a Commission order during the pendency of Notice of Appeal pending before the Appellate Division). See Case No. 16-M-0434, *Proceeding on Motion of the Commission to Impose Consequences against Marathon Energy Corporation for Violations of the Uniform Business Practices*, Ruling Granting Extension Request (issued November 22, 2022)(granting further extension of deadlines in underlying order on rehearing during pendency of litigation before New York Court of Appeals).