



159 20th St., Suite 1B
Brooklyn, NY 11232

P. 212 590 0145

info@feller.law
www.feller.law

July 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 requests a further extension of the July 31, 2024 deadline set forth in the “Ruling Granting Extension” issued on June 10, 2024,² until the later of 60 days after the Albany Supreme Court has issued a ruling on the Article 78 Petition the NYRCC intends to file, or at least until August 31, 2024. At present, the deadline of July 31, 2024 will take effect before the deadline to submit the Article 78 Petition, which is August 18, 2024.³

As previously disclosed in its June 3, 2024 extension request, the NYRCC plans 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*. While the Coalition supports the objectives of the underlying

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 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.”).

³ NY CPLR § 217 (2023).

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, among other concerns, the Coalition will argue that the Rehearing Order's revisions to the ESCO UBP and DER UBP do not fully align with new section 66-t of the Public Service Law ("Law"), most notably in restricting the required demonstration of financial accountability to only one form, namely a letter of credit, while the Law clearly allows for multiple methods and explicitly calls for bonds.⁴

In anticipation of the Article 78 Petition and to avert the significant disruption that would result from enforcing the Rehearing Order, the NYRCC requests that the Secretary grant the proposed 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, or at least until August 31, 2024. Such a move would align with previous decisions by the Commission Secretary to maintain current regulatory conditions during review of Commission orders.⁵

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 ruling on this request by **Monday, July 8, 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,

By: /s/ Natara G. Feller
Natara G. Feller, Esq.
Feller Law Group, PLLC
Phone: (212) 590-0145
Email: natarafeller@feller.law

Counsel to the New York Retail Choice Coalition

⁴ NY 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).