

UNIFORM BUSINESS PRACTICES  
FOR ELECTRIC ENERGY SERVICE  
COMPANIES  
IN THE LIPA SERVICE TERRITORY  
(“UBP-LI-ESCO”)

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## SECTION 1: DEFINITIONS

As used in the Uniform Business Practices for Electric Energy Service Companies in the LIPA Service Territory<sup>1</sup> (UBP-LI-ESCO) the following terms shall have the following meanings:

Assignment – Transfer by one ESCO to another ESCO of its rights and responsibilities relating to provision of electric supply under a sales agreement.

Authority- The Long Island Power Authority. Depending on usage, as used herein, this term may include or refer to the Long Island Power Authority, which owns the electric transmission and distribution system in Nassau and Suffolk Counties and the Rockaways section of Queens in New York City, and/or the Manager<sup>2</sup> which is responsible for providing services on behalf of the Authority and/or its subsidiary under the terms of the A&R OSA.

Authority customer account number – A number used by the Authority to identify the account of a utility customer.

Billing cycle – The period for which a customer is billed for usage of electricity.

Billing services agreement (BSA) – An agreement between the Authority and the ESCO stating the billing practices and procedures and the rights and responsibilities of billing and non-billing parties relating to issuance of consolidated bills to customers.

Budget billing – A billing plan that provides for level or uniform amounts due each billing period over a set number of periods, typically 12 months, and determined by dividing projected annual charges by the number of periods. Installment amounts may be adjusted during the period and may include reconciliations at the end of the budget period to account for differences between actual charges and installment amounts.

Business day – Monday through Friday, except for public holidays.

Consolidated billing – A billing option that provides customers with a single bill combining charges for both delivery and ESCO supply service and issued by the Authority (utility consolidated bill). This option is not available to ReCharge NY Customers at this time.

Customer inquiry – A question or request for information from a customer relating to a rate, term, or condition of service provided by an ESCO, the Authority or other service provider.

Cramming – The addition of unauthorized charges to a customer’s bill.

Deferred payment agreement (DPA) – A fair and equitable payment plan agreed upon by a customer and utility and/or a customer and an ESCO that allows a customer to pay a customer and utility and/or a customer and an ESCO that allows a customer to pay an overdue amount in installments. A DPA is based upon the customer's financial circumstances and ability to pay the overdue amount while making payment on current charges.

Demand – The amount of electricity that is or could be immediately needed by a customer at

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<sup>1</sup> In the event of any inconsistency between the Authority’s Electric Service Tariff and this document, the Tariff will govern.

<sup>2</sup> Manager - The entity engaged by the Authority to operate, maintain, manage and act as agent for the Authority’s system, including PSEG Long Island LLC and its subsidiary Long Island Electric Utility ServCo LLC, pursuant to the terms and conditions of the Second Amended and Restated Operation Services Agreement dated April 1, 2022, as it may be restated, amended, modified, or supplemented from time to time (“A&R OSA”), between Long Island Electric Utility ServCo LLC as agent of and acting on behalf of the Long Island Power Authority f/k/a Long Island Lighting Company d/b/a LIPA and PSEG Long Island LLC. Nothing herein shall be read to change or modify Manager’s duties and obligations or create any liability on the part of Manager beyond that set forth in the A&R OSA.

any given point in time, and sometimes referred to as customer load. For consolidated billing, the term is used in the context of “billing period demand” for customer bills. Demand can also refer to: (1) the amount of electricity, measured in kilowatts (kW), that a customer uses at a point in time, (2) the customer’s usage averaged over a period of one hour or less, or (3) the capacity of facilities reserved for the customer for stand-by or other service.

Direct Retail Customer – An entity that purchases and schedules delivery of electricity for its own consumption and not for resale. A customer with an aggregated minimum peak connected load of one (1) MW to a designated zonal service point qualifies for direct purchase and scheduling of electricity provided the customer complies with NYISO requirements.

Door-to-door sales – The sale of energy services in which the ESCO or the ESCO’s representative personally solicits the sale, and the buyer’s agreement or offer to purchase is made at a place other than the places of business of the seller; provided that “door-to-door sales” shall not include any sale which is conducted and consummated entirely by mail, telephone or other electronic means, or during a scheduled appointment at the premises of a buyer of nonresidential utility service, or through solicitations of commercial accounts at trade or business shows, conventions or expositions.

Drop – A transaction that closes a customer’s account with a provider. This term is used when: (1) a customer’s enrollment is pending and the customer rescinds the enrollment; (2) a customer enrolled with an ESCO returns to Authority service or enrolls with another ESCO; or (3) the ESCO discontinues service to a customer.

Dual billing – A billing option that provides for separate calculation of charges and presentation of bills to the customer by the Authority and ESCO.

Electronic data interchange (EDI) – The computer-to-computer exchange of routine information in a standard format using established data processing protocols. EDI transactions are used in retail access programs to switch customers from one supplier to another or to exchange customers’ account history or billing data between the Authority and an ESCO. Transaction set standards, processing protocols and test plans are authorized in orders issued by the Public Service Commission in Case 98-M- 0667, In the Matter of Electronic Data Interchange and available on the Department of Public Service website at: [www.dps.ny.gov/98m0667.htm](http://www.dps.ny.gov/98m0667.htm). EDI is not available for ReCharge NY Customers at this time. A non-EDI process will be utilized for ReCharge NY Customers.

Energy broker – A non-utility entity that performs energy management or procurement functions on behalf of customers or ESCO and 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.

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.

Energy services company (ESCO) – An entity eligible to sell electricity to end-use customers using the transmission or distribution system of a utility. ESCOs may perform other retail service functions.

ESCO marketing representative – An entity that is either the ESCO, 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.

Enroll/Enrollment – The process used to switch a customer from the Authority-provided supply

service to an ESCO or from one ESCO to another.

Enrollment date – The effective date for commencement of electric supply service from an ESCO or the Authority.

Express Customer Consent – Consent given directly and knowingly by the customer, either verbally, electronically or in writing, that shall be maintained by the ESCO in a verifiable format.

Guarantor – An entity that agrees to pay another’s debt or perform another’s duty, liability, or obligation.

Independent Third-Party Verification – the confirmation of a customer’s agreement to take service from an ESCO or authorization for the ESCO to request information by a Verification Agent.

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

LIPA Electric Service Tariff – A schedule of rates, terms and conditions of services provided by the Authority.

Load profile – Actual or estimated customer energy usage by hourly or sub-hourly interval over a period of a week, month, or year representing usage for a customer or average usage for a customer class.

Lockbox – A billing payment receipt method agreed upon by the Authority and an ESCO, involving use of a third-party financial institution to receive and disburse customer payments.

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

Material Change – Any change that affects the rates, terms, and conditions of service contained in the customer agreement. For example, this could include but not be limited to, the commodity rate, product term, or product type.

Meter – A device for determination of the units of electric service supplied to consumers.

Multi-retailer model – A model for retail access that involves provision of electric supply and of delivery service, provided separately to end use customers by two or more entities.

New York State Independent System Operator (NYISO) - An independent management organization, authorized by the Federal Energy Regulatory Commission, operating the bulk electric transmission system.

New delivery customer – A customer initiating delivery service by the Authority.

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

Pending enrollment – A stage in processing an enrollment that commences with validation of an enrollment transaction request and ends on the enrollment date that the new supplier is expected to deliver energy.

Pending ESCO – An ESCO is a pending ESCO from the date of receipt of an EDI notice containing the effective date for a customer’s enrollment until the ESCO commences supply service for that customer. ReCharge NY Customers will be notified using a non-EDI process.

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

Purchased accounts receivable – A debt owed to an ESCO by a customer for receipt of supplies of electricity and transferred to the Authority by the ESCO in exchange for consideration.

Without recourse – Purchase of accounts receivable without recourse by the Authority means that the ESCO is not liable to the Authority if the ESCO's customers fail to make payments. The Authority when purchasing accounts receivable without recourse sends payments to an ESCO at predetermined intervals for amounts billed that are not in dispute and has no right to seek reimbursement from an ESCO of any unpaid amounts.

Rate ready – A consolidated billing practice that requires each ESCO to furnish to the Authority, in advance of the billing cycle, the rates, rate codes or prices (fixed and/or variable), tax rates, billing information, and bill messages. The Authority, after receipt of meter usage data, uses the information on record to calculate the ESCO's charges.

ReCharge NY Customer(s) – Customers participating in the Authority's ReCharge NY Power Program as described in LIPA's Tariff.

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

Sales agreement – An agreement between a customer and an ESCO that contains the terms and conditions governing the supply of electricity provided by an ESCO. The agreement may be a written contract signed by the customer or a statement supporting a customer's verifiable verbal or electronic authorization to enter into an agreement with the ESCO for the services specified.

Slamming – Enrollment of a customer by an ESCO without authorization.

Small non-residential electric customer – a non-residential electric customer who does not have any demand metered accounts.

Special meter reading – An actual meter reading performed, upon request, on a date that is different than the regularly scheduled meter reading date.

Special needs customer – A customer who has a certified medical emergency condition, who is elderly, blind or physically challenged, or who may suffer serious impairment to health or safety as a result of service termination during cold weather periods and, thus, is eligible for special procedures before termination of service under the Home Energy Fair Practices Act (HEFPA) (Public Service Law §32(3)).

Switch – Transfer of a customer from one ESCO to another, from the Authority to an ESCO, or from an ESCO to the Authority.

Switching cycle – For electric service, the period between the date of the last meter read and the next regularly scheduled meter read.

Termination Fee – An amount specified in an ESCO sales agreement where such agreement permits the ESCO to assess and collect a charge in such amount to a customer who terminates the agreement before the end of a term described in that agreement, regardless of whether the assessed amount is identified as a fee, a charge, liquidated damages or a methodology for the calculation of damages, and regardless of whether it is fixed, scaled or subject to calculation based on market factors. In the event the customer is deceased before the end of such contract term, no fee for termination or early cancellation shall be assessed.

Verification Agent - An entity that is an independent vendor/contractor conducting, on behalf of the ESCO, verification of an agreement, resulting from telephonic or door-to-door marketing with a customer to initiate service and begin enrollment or to obtain customer authorization for release of information, as required by Section 5, Attachment 1 of the UBP-LI-ESCO. In the limited circumstance where the verification is only of customer authorization for release of

information, the entity does not need to be independent of the ESCO.

## **SECTION 2: ELIGIBILITY REQUIREMENTS**

### A. Applicability

ESCOs seeking to operate in the LIPA service territory are required to receive and maintain a Department of Public Service (the Department) finding of eligibility to sell electricity as an ESCO. The following details the Department's requirements for an ESCO to receive and maintain eligibility.

### B. Application Requirements

1. Applicants seeking eligibility to sell electricity as ESCOs are required to submit to the Department an application package containing the following information and attachments:
  - a. A completed Retail Access Eligibility Application Form (Application), available on the Department website ([www.dps.ny.gov](http://www.dps.ny.gov)). The Application shall require the applicant to:
    - i. identify the methods by which it intends to market its products and services to customers;
    - ii. identify the category/categories of commodity products it intends to provide to customers (e.g. variable-rate, fixed-rate, or renewably sourced commodity);
    - iii. disclose each state in which the applicant operates as an ESCO or has operated within the 24 months preceding the date of application and provide any data in its possession regarding complaint history;
    - iv. disclose any other trade names used by the applicant and the state in which the trade name was/is used;
    - v. disclose and describe any data breaches associated with customer proprietary information that occurred in any jurisdiction within the 24 months preceding the date of application, as well as any actions taken by the applicant in response to the incident(s);
    - vi. disclose and describe specific policies and procedures established by the applicant to secure customer data; and
    - vii. disclose any history of bankruptcy, dissolution, merger, or acquisition activities in the 24 months preceding the date of application, including data for affiliates of the ESCO applicant and upstream owners and subsidiaries.
  - b. A sample standard Sales Agreement for each customer class that meets the requirements set forth in Section 5.B.3, *infra*.
  - c. Sample forms of the notices sent upon assignment of sales agreements, discontinuance of service, renewal notices, or transfer of customers to other providers.
  - d. A sample ESCO bill used when dual billing is in effect with terms stated in clear, plain language. A copy of the ESCO sample bill shall also be provided to the Authority.
  - e. Procedures used to obtain customer authorization for ESCO access to a

- customers' historic usage or credit information;
  - f. Sample copies of informational and promotional materials that the ESCO uses for mass marketing purposes;
  - g. Proof of registration with the New York State Department of State;
  - h. Internal procedures for prevention of slamming and cramming;
  - i. Name, postal and e-mail addresses, and telephone and fax numbers for the applicant's main office;
  - j. Names and addresses of any entities that hold ownership interests of 10% or more in the ESCO, including a contact name for corporate entities and partnerships;
  - k. Detailed explanation of any criminal or regulatory sanctions imposed during the previous 36 months against any senior officers of the ESCO or any entities holding ownership interests of 10% or more in the ESCO;
  - l. An Officer Certification document sworn to by a high-level officer of the ESCO applicant, such as the Chief Executive Officer, President or the equivalent, in which the officer affirms that the ESCO is willing and able to comply with all applicable laws and regulations;
  - m. A copy of the ESCO's quality assurance program, which is designed to monitor (a) compliance with Section 10 of the UBP-LI-ESCO and (b) accuracy of the ESCO marketing materials provided to prospective customers;
  - n. A completed Service Provider Contact Form, which can be found on the Department's website <http://www.dps.ny.gov/ocs.html>, identifying the ESCO's employee(s) responsible for resolving consumer complaints received by the Department and referred to the ESCO; and
  - o. A list of the entities, including contractors and sub-contractors, that will market to customers on behalf of the ESCO. The list must include the entities' names, addresses, phone numbers and owners, managers, and/or principals. This list must be updated regularly as entities are added or removed.
2. Applicants shall submit to the Department the name of the utility that will test designated EDI transactions required for syntactical verification in the Phase I testing program. The Department shall maintain a list of ESCOs that successfully complete Phase I test requirements by transaction type.
  3. An ESCO that knowingly makes false statements in its application package is subject to denial or revocation of eligibility.
  4. If the application package contains information that is a trade secret or sensitive for security reasons, the applicant may request that the Department withhold disclosure of the information, pursuant to the Freedom of Information Law (Public Officers Law Article 6) and Public Service Commission regulations (16 NYCRR §6-1.3).
- C. Department Review Process
1. The Department shall review the Application information and documentation submitted by each applicant and make an initial determination as to the applicant's likelihood of compliance with the Uniform Business Practices if the ESCO were deemed eligible to operate in the State. To enable the Department to make a thorough

assessment of an application, an ESCO shall notify the Department of any major changes in the information submitted in the Retail Access Eligibility Application Form and/or application package that occurs during the Department review process.

2. Following its review of the Application information and documentation, the Department shall advise the applicant, in writing, if the Application is approved and the applicant is eligible to operate in the State and if satisfaction of Phase I EDI testing requirement has been verified by the utility designated by the applicant.
  3. ESCOs deemed eligible to provide supply service by the Department must begin serving customers within two-years from the date of the letter notifying the ESCO of their eligibility status (eligibility letter). The ESCO that does not begin serving customers within such two-year period may be required to conduct additional EDI testing before enrollments will be processed.
  4. If following its review of the Application information and documentation the Department determines that the applicant is not likely to comply with the UBP-LI-ESCO if the ESCO were deemed eligible, the Department may recommend to the Commission that, for good cause shown, the Commission deny the ESCO's Application.
  5. In any instance that the Department recommends to the Commission that an ESCO applicant be denied eligibility, the applicant shall be afforded an opportunity to provide to the Commission with a response in rebuttal to the Department's recommendation and in support of its application before the Commission renders a final eligibility determination.
  6. The Department shall periodically review the eligibility of each ESCO operating in New York and make a recommendation to the Commission if the Department finds that the ESCO should not be permitted to continue operating in New York.
- D. Maintaining ESCO Eligibility Status
1. An ESCO shall submit by January 31 each year (January 31 Statement):
    - a. a statement that the information and attachments in its Retail Access Eligibility Form and application package are current; or
    - b. a description of revisions to the Retail Access Eligibility Form and application package and a copy of the revised portions or, at the ESCO's option, a copy of the revised portions identifying the revisions by highlighting or other means; and
    - c. An Officer Certification document, as required by Section 2.B.1.
  2. An ESCO shall update all the information it submitted in its original application package to the Department every three years, starting from the date of its eligibility letter, consistent with the requirements of UBP-LI-ESCO Section 2.B. An ESCO's status as an eligible supplier is continuous from the date of the Department eligibility letter, unless revoked or otherwise limited in accordance with UBP-LI-ESCO Section 2.D.5. If the three-year anniversary date falls within one month of January 31, the ESCO shall resubmit its application package in lieu of the January 31 statement.
  3. An ESCO shall file with the Secretary of the Department, a separate average unit price for products with no energy-related value-added services for each of two groups of customers and by load zone: i) residential price fixed for a minimum 12-month period; ii) residential variable price. The averages should be weighted by the amount of

supply sold at each price within each customer category. ESCOs shall also file the number of customers purchasing products in those categories. ESCOs shall file the required information quarterly, reflecting data over that period, within 30 days of the end of each calendar quarter (i.e., data must be provided no later than April 30th, July 30th, October 30th and January 30th of each year each year).<sup>3</sup>

4. An ESCO shall submit at other times during the year:
  - a. A description of any major change in the Retail Access Eligibility Application Form and/or application package and a copy of the revised portions or, at the ESCO's option, a copy of the revised portions identifying the revisions by highlighting or other means. For purposes of Subdivision D of this Section, the term, "major change," means a revision in the terms and conditions applicable to the business relationship between the ESCO and its customers, including provisions governing the process for termination of sales agreements.
  - b. Changes in marketing plans, including changes to the list required in subsection B.1.n of this Section of the UBP-LI-ESCO.
  - c. Changes in the ESCO's business and customer service information displayed on the Department's Website.
  - d. At least once every thirty days, each ESCO serving residential customers must post a price for each product it offers to those customer classes (e.g., fixed-price, variable-price, renewable energy, with each type of value-added service, etc.) on the Department's Power-to-Choose website. Each ESCO must guarantee to charge new customers no more than the price of the ESCO's posted offers at the time of the customer's agreement for each product.
  - e. Changes in personnel responsible for resolving consumer complaints received by the Department and referred to the ESCO.
5. An ESCO may be subject to the consequences listed in UBP-LI-ESCO Section 2.D.6.b for reasons, including, but not limited to:
  - a. false or misleading information in the application package;
  - b. failure to adhere to the policies and procedures described in its Sales Agreement;
  - c. failure to comply with required customer protections;
  - d. failure to comply with applicable 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 Retail Access Eligibility Form or application package;
  - f. failure to comply with the UBP-LI-ESCO terms and conditions, including discontinuance requirements;
  - g. failure to comply with EDI transaction set standards and processing protocols and/or use properly functioning EDI systems;
  - h. repeated failures to comply with price reporting requirements, reporting misleading price information, or continuing to fail to comply with price reporting requirements

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<sup>3</sup> If the Power-to-Choose website is modified to allow ESCOs to file this information there, the Department may notify ESCOs that compliance with this provision may be accomplished in that manner.

- after withdrawal of eligibility to enroll new customers;
- i. failure to comply with the Commission’s Environmental Disclosure Requirements or failure to comply with other Commission Orders, Rules or Regulations;
  - j. failure to reply to a complaint filed with the Department and referred to the ESCO within the timeframe established by the Department’s Office of Consumer Services which is not less than five days;
  - k. any of the reasons stated in Subdivision F of this Section; or
  - l. a material pattern of consumer complaints on matters within the ESCO’s control;
  - m. 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
  - n. failure to comply with any of the Marketing Standards set forth in Section 10 of the UBP-LI-ESCO.
6. In determining the appropriate consequence for a failure or non-compliance in one or more of the categories set forth in UBP-LI-ESCO Section 2.D.5, 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 ESCO’s history of previous violations.
- a. The Commission or Department shall:
    1. Either (a) notify the ESCO in writing of its failure to comply and request that the ESCO 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 ESCO show cause why a consequence should not be imposed.
    2. The Commission may impose the consequences listed in subparagraph b of this paragraph if (a) ESCO 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.
    3. Consequences shall not be imposed until after the ESCO is provided notice and an opportunity to respond.
    4. The notice of consequences imposed by the Commission will be published on the Department’s website.
  - b. Consequences for non-compliance in one or more of the categories set forth in UBP-LI-ESCO Section 2.D.5 may include one or more of the following restrictions on an ESCO’s opportunity to sell electricity to retail customers:
    1. Suspension from a specific Commission approved retail program in either a specific service territory or all territories in New York;
    2. Suspension of the ability to enroll new customers in either a specific service territory or all service territories in New York;
    3. Imposition of a requirement to record all telephonic marketing presentations, which shall be made available to the Department for review;
    4. Reimbursements to customers who did not receive savings promised in the ESCO’s sales agreement/Customer Disclosure Statement or substantially

demonstrated to have been included in the ESCO's marketing presentation or to customers who incurred costs as a result of the ESCO's failure to comply with the marketing standards set forth in Section 10 of the UBP-LI-ESCO;

5. Release of customers from sales agreements without imposition of early termination fees;
  6. Revocation of an ESCO's eligibility to operate in New York; and,
  7. Any other measures that the Commission may deem appropriate.
- c. Consequences imposed pursuant to this paragraph shall continue to apply until the ESCO's failure to comply with the UBP-LI-ESCO has been cured or the Commission or Department has determined that no further cure is necessary.
7. An ESCO's eligibility to serve customers is valid unless: the ESCO abandons its eligibility status; or such status is revoked by the Commission through a final order pursuant to UBP-LI-ESCO Section 2.D.6.
  8. The Department shall notify the Authority upon notice to the ESCO, and the NYISO if applicable, of any determination to revoke an ESCO's eligibility to sell electricity. The Authority shall notify the ESCO's customers, in accordance with paragraph 3 of Subdivision F of this Section, of any Department revocation of an ESCO's eligibility.
- E. Authority Requirements
1. After receipt of the Department's compliance letter, the ESCO shall notify the Authority, and NYISO if applicable, of its eligibility status and intent to complete the process to commence operation in the Authority's service area, including execution of any operating agreement that is required.
  2. Upon satisfaction of the Authority's and, if applicable the NYISO's requirements, and successful completion of EDI testing conducted by the Authority, the ESCO shall enter into an operating agreement with the Authority to commence operations in its service territory. The Authority's requirements are set forth in the Tariff for Electric Service, Operating Procedures Manuals and associated Operating Agreement.
- F. Discontinuance of an ESCO's and Direct Retail Customer's Participation in a Retail Access Program
1. In accordance with the procedures established in this Subdivision, the Authority may discontinue an ESCO's or Direct Retail Customer's participation in its retail access program for the following reasons:
    - a. Failure to act that is likely to cause, or has caused, a significant risk or condition that compromises the safety, system security, or operational reliability of the Authority's system, and the ESCO or Direct Retail Customer failed to eliminate immediately the risk or condition upon verified receipt of a non-EDI notice;
    - b. Failure to pay an invoice upon the due date;
    - c. Failure to maintain a creditworthiness standard or provide required security;
    - d. Failure to comply with the terms and conditions of the Authority's tariff, operating agreement, or the Authority's Long Island Choice Program Operating Procedures Manual to the extent that said documents are consistent with the provisions of the UBP-LI-ESCO ;

- e. Discontinuance of an ESCO's or Direct Retail Customer's participation in the Authority's retail access program by the NYISO.
  - f. Department of Public Service determination that an ESCO is not eligible to sell electricity to retail customers.
2. To initiate the discontinuance process, the Authority shall send a non-EDI discontinuance notice by overnight mail and verified receipt, to the ESCO or Direct Retail Customer and the Department. The notice shall contain the following information:
  - a. The reason, cure period, if any, and effective date for the discontinuance;
  - b. A statement that the Authority shall notify the ESCO's customers of the discontinuance if the ESCO fails to correct the deficiency described in the notice within the cure period, unless the Department directs the Authority to stop the discontinuance process;
  - c. The Authority may suspend the ESCO's right to enroll customers until correction of the deficiency; and
  - d. Correction of the deficiency within the cure period, or a Department directive, will end the discontinuance process.
3. The Authority shall send notices to the ESCO's customers informing them of the discontinuance and providing the following information:
  - a. The discontinuance shall or did occur on one of the following dates selected by the Authority: the scheduled meter read date, the first day of the month, or another date, if readings are estimated, or on the date of a special meter read;
  - b. Customers have the option to select another ESCO or return to full utility service
  - c. Names and telephone numbers of ESCOs offering service to retail customers in the Authority's service territory;
  - d. Any ESCO selected by a customer may file an enrollment request on the customer's behalf with the Authority, and the Authority shall charge no fee for changing the customer's provider to the new ESCO; and,
  - e. During any interim between discontinuance of a customer's current ESCO and enrollment with a new ESCO, the Authority shall provide service under its applicable tariff, unless the Authority notified the customer that it is terminating its delivery services to the customer on or before the discontinuance date.
4. The Authority shall submit a sample copy of its discontinuance notice to the Department for review and approval prior to distribution to customers.
5. The Authority may request permission from the Department to expedite the discontinuance process, upon a showing that it is necessary for safe and adequate service or in the public interest. Any expeditious discontinuance process shall include the ESCO or Direct Retail Customer, and the Authority.
6. Upon any discontinuance, an ESCO or Direct Retail Customer shall remain responsible for payment or reimbursement of any and all sums owed under the Authority's Electric Service Tariff, any tariffs on file with the FERC and service agreements relating thereto, or any agreements between the ESCO and the Authority.
7. The notice requirements and time limits for the Authority to discontinue an ESCO's or

Direct Retail Customer's participation in the Authority's retail access program (discontinue participation) are:

- a. Upon the Authority determination that an ESCO's or Direct Retail Customer's action, or failure to act, is likely to cause, or has caused, a significant risk or condition that compromises the safety, system security, or operational reliability of the Authority's system and that the ESCO or Direct Retail Customer failed to eliminate immediately the risk or condition upon verified receipt of a non-EDI notice, the Authority may discontinue participation as soon as practicable.
- b. Upon the Authority's determination that an ESCO or Direct Retail Customer failed to pay an invoice on the due date, as specified in the Authority's Electric Service Tariff, and the ESCO's or Direct Retail Customer's required security or credit limit is insufficient to cover the unpaid amount, with interest, the Authority may discontinue participation no sooner than ten business days (cure period) after receipt by the ESCO or Direct Retail Customer of a discontinuance notice. If the ESCO or Direct Retail Customer pays the amount due on or before the expiration of the cure period, the Authority shall stop the process to discontinue participation.
- c. Upon the Authority's determination that an ESCO or Direct Retail Customer failed to provide or maintain a creditworthiness standard or required security, the Authority may initiate a discontinuance process no sooner than five business days (cure period) after receipt by the ESCO or Direct Retail Customer of a discontinuance notice. If the ESCO or Direct Retail Customer satisfies the creditworthiness standard or provides the required security on or before the expiration of the cure period, the Authority shall stop the discontinuance process. Upon a determination to continue with the discontinuance process because the ESCO or Direct Retail Customer failed to comply with the creditworthiness standard or provide adequate security, the Authority shall notify the ESCO or Direct Retail Customer that it will discontinue participation no later than 15 business days from the expiration of the cure period. The Authority shall notify the ESCO's customers that it will discontinue participation on or before 15 days from the expiration of the cure period. If a failure to comply with the creditworthiness standard or provide adequate security occurred twice during the past 12 months and the Authority sent a related discontinuance notice for each failure, it may discontinue participation no sooner than two business days after receipt by an ESCO or Direct Retail Customer of a discontinuance notice.
- d. Upon the Authority's determination that an ESCO or Direct Retail Customer failed, except in force majeure conditions, to comply with any other applicable provision of the Authority's Electric Service Tariff, or operating agreement, the Authority may initiate a discontinuance process no sooner than ten business days (cure period) after receipt by the ESCO or Direct Retail Customer of a discontinuance notice. If the ESCO or Direct Retail Customer provides adequate assurances and a description of any necessary process changes that ensure compliance on or before the expiration of the cure period, the Authority shall stop the discontinuance process. Upon a determination to continue the discontinuance process because the assurances and proposed process changes are inadequate, the Authority shall notify the ESCO or Direct Retail Customer that it will discontinue participation no later than 15 business days from the expiration of the cure period. The Authority shall notify the ESCO's customers that it will discontinue participation on or before the expiration of 15

business days after the end of the cure period.

### SECTION 3: CREDITWORTHINESS

#### A. Applicability

This Section establishes creditworthiness standards that apply to ESCOs and Direct Retail Customers. An ESCO's and Direct Retail Customer's participation in the Authority's retail access program is contingent upon satisfaction of creditworthiness requirements and provision of any security.

#### B. ESCOs

1. An ESCO shall satisfy the Authority's creditworthiness requirements if:
  - a. The ESCO, or a guarantor, maintains a minimum rating from one of the rating agencies and no rating below the minimum from one of the other two rating agencies. For the purposes of this Section, minimum rating shall mean "BBB" from Standard & Poor's, "Baa2" from Moody's Investor Service, or "BBB" from Fitch Ratings (minimum rating); or,
  - b. The ESCO enters into a billing arrangement with the Authority, whereby the Authority bills customers on behalf of the ESCO and retains the funds it collects to offset any balancing and billing service charges provided that the Authority has a priority security interest with a first right of access to the funds. The ESCO shall submit an affidavit from a senior officer attesting to such utility interest and right. Except that an ESCO serving customers outside of such billing arrangement, must satisfy the security requirements of UBP-LI-ESCO Section 3.D with respect to those customers.
2. If an ESCO, or a guarantor, is not rated by Standard & Poor's, Moody's Investor Service or Fitch Ratings, it shall satisfy the Authority's creditworthiness requirements if the ESCO, or a guarantor:
  - a. Maintains a minimum "1A2" rating from Dun & Bradstreet (Dun and Bradstreet minimum rating) and the ESCO maintains 24 months good payment history with the Authority; and,
  - b. Provides any security required by the Authority, calculated in accordance with Subdivision D, after deduction of the following unsecured credit allowances:

<u>Rating</u>	<u>Unsecured Credit Allowance</u>
5A1 or 5A2	30% of an ESCO's tangible net worth, up to 5% of the Authority's average monthly revenues for the applicable service
4A1 or 4A2	30% of an ESCO's tangible net worth, up to 5% of the Authority's average monthly revenues for the applicable service

3A1 or 3A2	30% of an ESCO's tangible net worth, up to 5% of the Authority's average monthly revenues for the applicable service
2A1 or 2A2	50% of an ESCO's tangible net worth, up to \$500,000
1A1 or 1A2	50% of an ESCO's tangible net worth, up to \$375,000

An ESCO shall provide information, upon request of the Authority, to enable the Authority to verify the ESCO's equity. The Authority may request reasonable information to obtain the verification and shall safeguard it as confidential information and protect it from public disclosure. The Authority may deny the unsecured credit allowance to any ESCO that fails to provide the requested information.

3. The Authority may require an ESCO to provide and maintain security in the full amount of the Authority's credit risk, calculated in accordance with Subdivision D, if:
    - a. The ESCO, or a guarantor, is not rated;
    - b. The ESCO, or a guarantor, with a minimum rating is placed on credit watch with negative implications or is rated below the minimum rating;
    - c. The ESCO, or a guarantor, is rated below the Dun & Bradstreet minimum rating or the ESCO fails to maintain 24 months good payment history with the Authority; or
    - d. An ESCO issuing consolidated bills fails to render timely bills to customers or to make timely payments to the distribution utility.
  4. If the Authority's credit risk, associated with an ESCO's participation in its retail access program, exceeds 5% of the Authority's average monthly revenues for the applicable service, the Authority may require the ESCO, in addition to maintaining a minimum rating, to provide and maintain security in the amount of such excess credit risk.
- C. Direct Retail Customers
- A Direct Retail Customer shall satisfy the Authority's creditworthiness requirements if:
1. Its account is current and remained current for the past 12 months; and,
  2. If its debt is rated, it maintains a minimum rating of its long-term unsecured debt securities from one of the rating agencies and no rating below the minimum rating from one of the other two rating agencies.
- D. Calculation of Credit Risk and Security
- The Authority shall calculate its credit risk and establish its security requirements as follows:
1. Delivery Service Risk
    - a. Upon an ESCO request, the Authority shall establish separate security requirements for summer (April 1 - October 31) and winter (November 1 - March 31) and may retain winter security until the end of two months (April and May) after the end of the winter period.

## 2. Major Change in Risk

- a. A major change shall mean a change in credit risk of more than the greater of 10% or \$200,000.
- b. The ESCO or Direct Retail Customer shall promptly notify the Authority and the Department of any major change in credit and or rating risk.
- c. The Authority may require an ESCO or a Direct Retail Customer, within five days, to provide additional amounts of security if a major change occurs to increase its credit risk, as follows:
  1. If Standard & Poors, Moody's Investor Service, or Fitch Ratings downgrades an ESCO's, or its guarantor's, rating or a Direct Retail Customer's debt below the minimum rating or Dun & Bradstreet downgrades an ESCO's, or its guarantor's, rating or a Direct Retail Customer's debt; or,
  2. An increase occurs in customer usage or in energy prices and such increase is sustained for at least 30 days.
- d. In the event that a major change occurs to decrease the Authority's credit and/or rating risk, results in compliance by an ESCO or Direct Retail Customer with creditworthiness requirements, and elimination of the basis for holding some or all of the security, the Authority shall return or release the excess amount of the ESCO's or Direct Retail Customer's security with accumulated interest, if applicable. The Authority shall return such amount within five business days after receipt of an ESCO or Direct Retail Customer notice informing the Authority of the occurrence of such major change.

## E. Security Instruments

1. The following financial arrangements are acceptable methods of providing security:
  - a. Deposit or prepayment, which shall accumulate interest at the applicable rate per annum approved by the Public Service Commission for "Customer Capital";
  - b. Standby irrevocable letter of credit or surety bond issued by a bank, insurance company or other financial institution with at least an "A" bond rating;
  - c. Security interest in collateral; or,
  - d. Guarantee by another party or entity with a credit rating of at least "BBB" by S&P, "Baa2" by Moody's, or "BBB" by Fitch; or
  - e. Other means of providing or establishing adequate security.
2. The Authority may refuse to accept any of these methods for just cause provided that its policy is applied in a nondiscriminatory manner to any ESCO.
3. If the credit rating of a bank, insurance company, or other financial institution that issues a letter of credit or surety bond to an ESCO or a Direct Retail Customer falls below an "A" rating, the Authority shall allow a minimum of five business days for an ESCO or a Direct Retail Customer to obtain a substitute letter of credit or surety bond from an "A" rated bank, insurance company, or other financial institution.

## F. Lockbox

If the Authority and ESCO arrange for a lockbox, security requirements are reduced by 50%

provided that the arrangement includes the following:

1. Agreement on allocation of funds and the first right of the Authority, in the event of an ESCO's financial difficulty, to obtain funds in the lockbox deposited to the credit of the ESCO;
2. Establishment of rules for managing the lockbox;
3. Agreement on conditions for terminating the lockbox for non-compliance with the rules or for failure to receive customer payments on a timely basis; and,
4. Responsibility of an ESCO for any costs associated with implementing and administering the lockbox.

G. Calling on Security

1. If an ESCO or Direct Retail Customer fails to pay the Authority, in accordance with UPB Section 7, Invoices, the Authority may draw from security provided that the Authority notifies the ESCO or Direct Retail Customer five business days' in advance of the withdrawal and the ESCO or Direct Retail Customer fails to make full payment before the expiration of the five business days.
2. If an ESCO receives a discontinuance notice or elects to discontinue service to customers and owes amounts to the Authority, the Authority may draw from the security provided by the ESCO without prior notice.
3. If an ESCO files a petition or an involuntary petition is filed against an ESCO under the laws pertaining to bankruptcy, the Authority may draw from security, to the extent permitted by applicable law.

H. Application by the Authority

1. Within ten business days after receipt of a complete ESCO application, the Authority shall complete its evaluation of initial creditworthiness, state the rationale for its determination, and provide the calculation supporting the credit limit and any resulting security requirement.
2. The Authority shall perform, at least annually, an evaluation, at no charge, of an ESCO's satisfaction of creditworthiness standards and security requirements.
3. The Authority shall perform evaluations of creditworthiness, security requirements, and security calculations in a non-discriminatory and reasonable manner.
4. Pending resolution of any dispute, the ESCO or Direct Retail Customer shall provide requested security within the time required in this Section.
5. The Authority may reduce or eliminate any security requirement provided that it reduces or eliminates the requirement in a nondiscriminatory manner for any ESCO or Direct Retail Customer. The Authority may request reasonable information to evaluate credit risk. If an ESCO or Direct Retail Customer fails to provide the requested information, the Authority may deny the ESCO or Direct Retail Customer an opportunity to provide lower or no security.

## **SECTION 4: CUSTOMER INFORMATION**

### A. Applicability

This Section establishes practices for release of customer information by the Authority to ESCOs and Direct Retail Customers and identifies the content of information sets. The Authority and an ESCO shall use EDI standards, to the extent developed, for transmittal of customer information and may transmit data, in addition to the minimum information required, via EDI or by means of an alternative system.

### B. Customer Authorization Process

The Authority shall provide information about a specific customer requested by an ESCO authorized by the customer to receive the information.

1. An ESCO shall obtain customer authorization to request information, in accordance with the procedures in UBP-LI-ESCO Section 5, Changes in Service Providers, Attachments 1, 2, and 3. An ESCO shall inform its customers of the types of information to be obtained, to whom it will be given, how it will be used, and how long the authorizations will be valid. The authorization is valid for no longer than six months unless the sales agreement provides for a longer time.
2. The Authority shall assume that an ESCO obtained proper customer authorization if the ESCO is eligible to provide service and submits a valid information request.
3. An ESCO shall retain, for a minimum of two years or for the length of the sales agreement whichever is longer, verifiable proof of authorization for each customer. Verification records shall be provided by an ESCO, upon request of the Department, within five calendar days after a request is made. Locations for storage of the records shall be at the discretion of the ESCOs.
4. Upon request of a customer, the Authority shall block access by ESCOs to information about the customer.
5. An ESCO and its agent shall comply with statutory and regulatory requirements pertaining to applicable state and federal do-not-call registries.

### C. Customer Information Provided to ESCOs

1. Release of Information. The Authority shall use the following practices for transferring customer information to an ESCO:
  - a. The Authority shall provide the information in the Billing Determinant Information Set upon acceptance of an ESCO's enrollment request and the information in the Customer Contact Information Set and the Credit Information Set, upon ESCO request.
  - b. The Authority shall respond within two business days to valid requests for information as established in EDI transaction standards and within five business days to requests for data and information for which an EDI transaction standard is not available. The Authority shall provide the reason for rejection of any valid information request.
2. Customer Contact Information Set. The Authority, to the extent it possesses the information, shall provide, upon an ESCO request, consumption history for an electric account.

- a. Consumption history<sup>4</sup> for an electric account shall include:
  1. Customer's service address;
  2. Electric account indicator;
  3. Sales tax district used by the Authority and whether the utility identifies the customer as tax exempt;
  4. Rate service class and subclass or rider by account and by meter, where applicable;
  5. Electric load profile reference category or code, if not based on service class, or Installed Capacity (ICAP) tag, which indicates the customer's coincident peak electricity demand;
  6. Customer's number of meters and meter numbers;
  7. Usage type (e.g., kWh), reporting period, and type of consumption (actual, estimated, or billed);
  8. Whether the customer's supply service is currently provided by the utility;
  9. 12 months, or the life of the account, whichever is less, of customer data via EDI and, upon separate request, an additional 12 months, or the life of the account, whichever is less, of customer data via EDI or an alternative system at the discretion of the Authority, and, where applicable, demand information;<sup>5</sup> if the customer has more than one meter associated with an account, the Authority shall provide the applicable information, if available, for each meter; and
  10. Usage data in summary form (billing determinants aggregated in the rating periods defined under the Authority's tariffs for that customer's service classification) via EDI, and if electronic interval data is requested in detail, via an acceptable alternative electronic format.
3. Billing Determinant Information Set. Upon acceptance of an ESCO enrollment request, the Authority shall provide the following billing information for an electric account, as applicable<sup>6</sup>:
  - a. Customer's service address, and billing address, if different;
  - b. Electric account indicator;
  - c. Meter reading date or cycle and reporting period;
  - d. Billing date or cycle and billing period;
  - e. Meter number, if available;
  - f. Authority rate class and subclass, by meter;
  - g. Description of usage measurement type and reporting period;

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<sup>4</sup> The Authority, in addition to EDI transmittal, may provide Web based access to customer history information via the My Account feature (<https://myaccount.psegliny.com/user/registration>) for those customers with an AMI enabled meter. The meter data can be downloaded in Green Button format by the customer or they can provide access to a third party to register and login to download the data.

<sup>5</sup> The Authority may provide data for a standard 24 months or life of the account, whichever is less, as part of its Customer Contract Information Set.

<sup>6</sup> As specified in the EDI standard for an enrollment request and response, the Authority may transmit additional data elements, based upon the request, the responding Authority.

- h. Customer's load profile group, for electric accounts only;
  - i. Life support equipment indicator
  - j. Customer's location based marginal pricing zone, for electric accounts only; and,
  - k. Budget billing indicator.<sup>7</sup>
4. Credit Information Set. The Authority shall provide credit information for the most recent 24 months or life of the account, whichever is less, upon receipt of an ESCO's electronic or written affirmation that the customer provided authorization for release of the information to the ESCO. Credit information shall include number of times a late payment charge was assessed and incidents of service disconnection.
- D. Direct Retail Customer Information
- A Direct Retail Customer shall receive usage data and any subsequent changes, corrections and adjustments to previously supplied data, and estimated consumption for a period, at the same time that the Authority validates them for use. The Authority shall make available, upon request, to an electric Direct Retail Customer, a class load profile for its service class.
- E. Charges for Customer Information
- The Authority shall impose charges upon ESCOs or Direct Retail Customers for provision of the information described in this Section. The Authority may impose an incremental cost-based fee, authorized in tariffs for an ESCO's request for customer data for a period in excess of 24 months or for detailed interval data per account for any length of time.
- F. Unauthorized Information Release
- An ESCO, its employees, agents, and designees, are prohibited from selling, disclosing or providing any customer information obtained from the Authority, in accordance with this Section, to others, including their affiliates, unless such sale, disclosure or provision is required to facilitate or maintain service to the customer or is specifically authorized by the customer or required by legal authority. If such authorization is requested from the customer, the ESCO shall, prior to authorization describe to the customer the information it intends to release and the recipient of the information.

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<sup>7</sup> This indicator is limited to 12 month levelized payment plans and does not include other payment plans.

## **SECTION 5: CHANGES IN SERVICE PROVIDERS**

### A. Applicability

This Section establishes practices for receiving, processing, and fulfilling requests for changing a customer's electricity provider and for obtaining a customer's authorization for the change. A change in a provider includes transfer from: (1) one ESCO to another; and (2) an ESCO to the Authority. This Section also establishes practices for: an ESCO's drop of a customer or a customer's drop of an ESCO, retention of an ESCO after a customer's relocation within the Authority's service area, assignment of a customer, and initiation or discontinuance of procurement of electricity supplies by a Direct Retail Customer. This Section does not establish practices for obtaining other energy-related services or changing billing options.

The process of changing a service provider is comprised of two steps. For enrollment with an ESCO, the first step is obtaining customer agreement, and any required third-party verification, to accept electric service according to the terms and conditions of an offer. A sales agreement establishes the terms and conditions of the customer's business arrangement with the ESCO. The second step is enrollment and the Authority's modification of its records to list the customer's transfer to a provider on a specific date. The second step is primarily between the ESCO and the Authority.

### B. Customer Agreement

An ESCO, 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, an Energy Broker, or an 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.
  - a. Telephone agreement and authorization, preceded, or followed within three business days, by provision of a sales agreement, in accordance with requirements in Attachment 1 – Telephonic Agreement and Authorization/Third Party Verification Requirements;
  - b. Electronic agreement and authorization, attached to an electronic version of the sales agreement, in accordance with requirements in Attachment 2 – Electronic Agreement and Authorization Requirements; or
  - c. Written agreement bearing a customer's signature on a sales agreement (original or fax copy of a signed document), in accordance with requirements in Attachment 3 – Written Agreement and Authorization Requirements.
2. For any sale resulting from either door-to-door or telephonic marketing, each enrollment is only valid with an independent third-party verification.
3. The ESCO shall provide residential customers the right to cancel a sales agreement within three business days after its receipt (cancellation period).
4. The standard Sales Agreements for each customer class shall include the following information written in plain language:
  - a. Terms and conditions applicable to the business relationship between the ESCO and the customer which includes:
    1. provisions governing the process for rescinding or terminating an agreement by the ESCO or the customer including provisions stating that a residential

- customer may rescind the agreement within three business days after its receipt;
2. the placeholder for the price or how the price is determined, the terms and conditions of the agreement, including the term and end date, if any, of the agreement, the amount of the termination fee and the method of calculating the termination fee, if any, the amount of late payment fees, if applicable, and the provisions, if any, for the renewal of the agreement; and,
  3. a clear description of the conditions, if any, that must be present in order for savings to be provided to the customer, if savings are guaranteed.
- b. Such contract shall also include on the first page thereof a Customer Disclosure Statement (the Statement). The text within this Statement shall state in plain language the terms and conditions described above and set forth in Attachment 4 – Sample Customer Disclosure Statement. When the form contract is used by the ESCO as its agreement with the customer, the Customer Disclosure Statement shall also contain the price term of the agreement. In the event that the text in the Statement differs from or is in conflict with a term stated elsewhere in the agreement, the term described by the text in the Statement shall constitute the agreement with the customer notwithstanding a conflicting term expressed elsewhere in the agreement.
  - c. Procedures for resolving disputes between the ESCO and a customer;
  - d. Consumer protections provided by the ESCO to the customer;
  - e. Method for applying payments and consequences of non-payment;
  - f. Any charges and fees, services, options or products offered by the ESCO;
  - g. Department contact information, including the Department ESCO hotline at 1- 888-697-7728;
  - h. ESCO contact information, including a local or toll-free number from the customer’s service location, and procedures used for after-hours contacts and emergency contacts, including transfer of emergency calls directly to the Authority and/or an answering machine message that includes an emergency number for direct contact with the Authority.
  - i. A statement that the ESCO shall provide at least 15 calendar days’ notice prior to any cancellation of service to a customer; and
  - j. If a condition of service, a statement that the ESCO reserves the right to assign the contract to another ESCO.
  - k. A disclosure of the form, amount and/or method of compensation provided to an Energy Broker or Energy Consultant if such compensation is collected through the ESCO customer agreement or is paid to the Energy Broker or Energy Consultant by the ESCO.
5. Additional terms and conditions applicable to residential customers and customers solicited via door-to-door sales include:
    - a. Prepayments – no agreement for the provision of energy by an ESCO shall require a prepayment.
    - b. Termination fees – no agreement for the provision of energy by an ESCO shall

require a termination or early cancellation fee in excess of either a) \$100 for any contract with a remaining term of less than 12 months; or b) \$200 for any contract with a remaining term of more than 12 months or; c) twice the estimated bill for energy services for an average month, provided that an estimate of an average monthly bill was provided to the customer when the offer was made by the ESCO along with the amount of any early termination fee. To calculate such average monthly bill, the ESCO may use an average of the customer's actual usage for the previous twelve months or if such data is unavailable at the time the offer is made apply the usage for a typical customer in that service classification as reported by the Authority or the Commission, and multiply it by the ESCO's estimate of the average annual rate that will be charged under the agreement.

- c. Variable charges – all variable charges must be clearly and conspicuously identified in all contracts, sales agreements and marketing materials.
- d. Material changes to and renewals of customer agreements– no material changes shall be made in the terms or duration of any contract for the provision of energy by an ESCO without the express consent of the customer obtained under the methods authorized in the UBP-LI-ESCO. This shall not restrict an ESCO from renewing a contract by clearly informing the customer in writing, not less than thirty days nor more than sixty days prior to the renewal date, of the renewal terms and the customer's option to reject the renewal terms. A customer shall not be charged a termination fee as set forth in Section 5.B.3.1.a herein, if the customer's express consent has not been obtained to any change in material terms and conditions, or if the customer objects to such renewal within three business days of receipt of the first billing statement under the agreement as renewed. All changes to the terms of the contract, including changes to the price, supply rate, product or service type, will be considered material and will require that the ESCO obtain the customer's express consent for renewal.
- e. An ESCO shall retain, for a minimum of two years or for the length of the sales/renewal agreement whichever is longer, verifiable proof of a customer's express consent for renewal.
- f. A renewal notice in the standardized format provided by the Department, must be used. In any notice regarding contract renewal, the provider shall disclose the following information as it exists at the time of such notice: (i) the price the provider currently charges for energy services; (ii) the price it proposes to charge upon renewal; (iii) the price that is charged by the customer's distribution utility; and (iv) information notifying the customer how they may compare past bills with what they would have been charged had they received energy services from their respective distribution utility, including, the internet address of any bill calculator offered on such customer's distribution utility's website.
- g. The renewal notice must be enclosed in an envelope which states in bold lettering: "IMPORTANT: YOUR [ESCO NAME] CONTRACT RENEWAL OFFER IS ENCLOSED. THIS MAY AFFECT THE PRICE YOU PAY FOR ENERGY SUPPLY."
- h. When a fixed-rate agreement is renewed as a fixed-rate agreement, the ESCO shall provide the customer with an additional notice before the issuance of the first

billing statement under the terms of the contract as renewed, but not more than 10 days prior to the date of the issuance of that bill. This notice shall inform the customer of the new rate and of his or her opportunity to object to the renewal, without the imposition of any early termination fees, within three days of receiving the first billing statement under the terms of the contract as renewed.

C. Provision of List of ESCOs to Customers

The Authority shall offer to provide a customer who requests initiation of delivery service with an up-to-date list of ESCOs and provide the list at any time, upon request of any customer.

D. Customer Enrollment Procedures

1. An ESCO shall transmit:

- a. An electric enrollment request to the Authority no later than 5 business days prior to the effective date of the enrollment, which is the first of each month
- b. The enrollment request shall contain at a minimum, the information required for processing set forth in Attachment 5, Enrollment Request.
- c. For ReCharge NY Customers, a non-EDI enrollment process will be utilized.

2. The Authority shall process enrollment requests in the order received. In the case of ReCharge NY Customers, the billing cycle date will be changed to the first of each month.

3. The Authority shall accept only one valid enrollment request<sup>8</sup> per customer during a switching cycle. If the Authority receives multiple enrollment requests for the same customer during a switching cycle, it shall accept the first valid enrollment request and reject subsequent requests.

4. An ESCO shall submit an enrollment request after it obtains customer authorization, and third-party verification where required, and it has provided the sales agreement to the customer. For telephonic enrollments, in which the ESCO sends the customer the sales agreement via US Mail, the ESCO shall provide for two business days for the customer to receive the sales agreement.

5. After receipt of an enrollment request, the Authority shall, within one business day, acknowledge its receipt, and provide a response indicating rejection and the reason, or acceptance and the effective date for the change of provider. For non-EDI enrollments, the Authority shall acknowledge the enrollment request within five (5) business days.

6. Upon acceptance of an enrollment request, the Authority shall contemporaneously send a notice to the incumbent ESCO that the customer's service with that ESCO will be terminated on the effective date of the new enrollment. In the event that the Authority receives notice from the pending ESCO, the incumbent ESCO (with specific customer authorization for each cancellation), or the customer, prior to the effective date that a pending enrollment is cancelled, the Authority shall transmit a request to reinstate service to the incumbent ESCO, unless the incumbent ESCO previously terminated service to the customer or the customer requests a return to full utility service.

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<sup>8</sup> Criteria for determining the validity of an EDI transaction are described in the EDI processing protocols adopted in Case 98-M-0667, Electronic Data Interchange.

7. With the exception of a new installation, use of an interim estimate of consumption or a special meter reading, a change of providers is effective: on the first day of any month, after providing the Authority an electronic enrollment request no later than 5 business days after receipt of an enrollment request. Service to new delivery customers is effective after the installation is complete and, if necessary, inspected.

E. Customer Notification

1. The Authority shall send no later than one calendar day after acceptance of an enrollment request a verification letter to the customer notifying the customer of the acceptance. The notice shall inform the customer that if the enrollment is unauthorized or the customer decides to cancel it, the customer is required immediately to so notify the Authority and the pending ESCO.
2. Upon receipt of such cancellation, the Authority shall cancel the pending enrollment and reinstate the customer with the incumbent ESCO, if any, or the Authority, provided that the Authority is notified prior to the planned effective date. If the Authority is notified on or after the planned effective date, the change to the new provider shall occur and remain effective for one billing cycle. The customer shall return to full utility service at the end of the next switching cycle, unless the customer is enrolled by another ESCO in accordance with this section prior to the next switching cycle.
3. If a customer notifies the pending ESCO of such cancellation, the pending ESCO shall send a customer's drop request to the Authority within one business day.

F. Rejection of Enrollment Requests

The Authority may reject an enrollment request for any of the following reasons:

1. Inability to validate the transaction;
2. Missing or inaccurate data in the enrollment request;
3. ESCO's ineligibility to provide service in the specified territory;
4. No active or pending delivery service;
5. A pending valid prior enrollment request; or
6. The account is coded as ineligible for switching.

G. Customer Relocations Within a Service Territory

1. A customer requesting relocation of service within the Authority's service territory and continuation of its ESCO service, arranges for continuation at the new location of delivery service by contacting the Authority and of supply service by contacting the ESCO. Each provider contacted by the customer shall remind the customer of the need to contact the other provider to initiate the change in service or arrange for a conference call with the other provider and customer, and within two days, notify the other provider that a customer requested relocation of service.
2. The Authority's representative shall inform the customer, or the customer's agent, and the ESCO of the effective dates, contingent upon the customer's approval, for discontinuance of service at one location and commencement of service at the new location. The ESCO shall confirm to the Authority that it shall continue service to the customer at the new location.
3. In the event that the ESCO is unable or does not wish to continue service to the

customer at the new location, the Authority shall provide full utility service to the customer.

#### H. Customers Returning to Full Utility Service

1. A customer arranges for a return to full utility service by contacting either the ESCO or the Authority in accordance with this paragraph. An ESCO contacted by the customer shall, within one business day, process the customer's request to return to full utility service. A utility contacted by a customer shall remind the customer to contact the ESCO about the customer's returning to full utility service provided, however, that if the customer has already contacted the ESCO or wants to proceed without contacting the ESCO, the utility shall, within one business day, process the customer's request to return to full utility service. If a change to full utility service results in restrictions on the customer's right to choose another supplier or application of a rate that is different than the one applicable to other full-service customers, the Authority shall provide advance notice to the customer.
2. A Direct Retail Customer that intends to change from procuring its own supplies to full utility service shall notify the Authority.
3. No ESCO shall transfer 5,000 or more customers during a billing cycle to full utility service, unless it provides no less than 60 calendar days' notice to the Authority and Department. The transfers shall occur on the customers' regularly scheduled meter reading dates, unless the Authority and ESCO agree to a different schedule.
4. The following process sets forth the steps for an ESCO's return of a customer to full utility service.
  - a. An ESCO may discontinue service to a customer and return the customer to full utility service provided that the ESCO notifies the customer and the Authority no later than 15 calendar days before the effective date of the drop. The ESCO's right to discontinue service to any customer is subject to any limitations contained in its sales agreement.
  - b. An ESCO's notice to retail customers shall provide the following information:
    1. Effective date of the discontinuance, established by the Authority;
    2. Statement that the customer has the option to select another ESCO receive full utility service from the Authority, or, if available in the Authority's service area and the customer is eligible, accept random assignment by the distribution utility to an ESCO; and,
    3. Statement that customer shall receive full utility service until the customer selects a new ESCO and the change in providers is effective, unless the Authority notified the customer that it will terminate its delivery service on or before the discontinuance date.
  - c. The ESCO shall provide a sample form of the notice it plans to send to its customers when it transfers 5,000 or more customers to the Department for review no later than five calendar days before mailing the notice to customers.

#### I. New Delivery Customers

1. A customer may initiate Authority delivery service and subsequently enter into a customer agreement with an ESCO for 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 in establishing Authority service. The 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 Authority so that ESCO supply service commences when Authority 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 Authority tariff. 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 the Authority 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 Authority 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 Authority may notify the customer of the acceptance.
- J. Multiple Assignments of Sales Agreements
1. An ESCO may assign all or a portion of its sales agreements to other ESCOs provided that the assigned sales agreements clearly authorize such assignments or the ESCO provides notice to its customers prior to the assignments and an opportunity for each customer to choose another ESCO or return to full utility service. An ESCO shall provide a written notice no later than 30 calendar days prior to the assignment or transfer date to each customer and the Authority. The notice to the Authority shall include a copy of the assignment document, with financial information redacted, executed by the officers of the involved ESCOs, and a copy of the notice sent to the customer, or, if a form notice, a copy of the form and a list of recipients.
  2. The assignment documents shall specify the party responsible for payment or reimbursement of any and all sums owed under any Authority tariff or Federal Energy Regulatory Commission tariff and any service agreements relating thereto, and under any agreements between ESCOs and the Authority and between ESCOs and their customers.
  3. An ESCO's notices to customers shall provide the following information:
    - a. Effective date of the assignment;
    - b. The name, mailing and e-mail addresses, and telephone number of the assigned ESCO; and,

- c. Any changes in the prices, terms and conditions of service, to the extent permitted by the sales agreement.
  4. The ESCO shall provide sample forms and any major modifications of such notices to the Department for review no later than five calendar days before mailing them to customers.
  5. The Authority shall, within two business days after receipt of an assignment request, acknowledge and initiate processing of the request and send written notice of the request to the ESCO's assigned customer.
- K. Unauthorized Customer Transfers
1. A change of a customer to another energy provider without the customer's authorization, commonly known as slamming, is not permitted. The Authority will report slamming allegations to the Department on at least a monthly basis.
  2. An ESCO that engages in slamming shall refund to a customer the difference between charges imposed by the slamming ESCO that exceed the amount the customer would have paid its incumbent provider and pay any reasonable costs incurred by the Authority to change the customer's provider from the ESCO that engaged in slamming to another provider.
  3. ESCOs shall retain two years or for the length of the sales agreement whichever is longer, documentation of a customer's authorization to change providers. Such documentation shall comply with the requirements described in Attachments 1, 2 or 3.
- L. Lists of ESCO Customers, Budget Billing, Charges and Fees
1. The Authority, upon an ESCO's request, shall provide at no charge, once each calendar quarter, a list of the ESCO's customers at the time of the request and, monthly, the number of accounts enrolled with an ESCO and the ESCO's sales (kWh).
  2. The Authority shall adjust its bills rendered under a budget billing plan on the effective date for changing a provider and include the adjustments in the customer's next bill.
  3. Upon enrollment of the Authority customer with an ESCO or return of an ESCO customer to full utility service, the Authority shall impose no restrictions on the number or frequency of changes of electricity providers, except as provided in this paragraph. The Authority shall accept only one valid enrollment request per customer during a switching cycle. If multiple requests are received for the same customer during a switching cycle, the Authority shall accept the first valid enrollment request and reject subsequent enrollment requests.
  4. The Authority shall impose no charge for changing a customer's electricity provider.
  5. The Authority may establish a fee in its tariffs for a special meter reading.

**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'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:
1. Do you understand that this conversation is recorded and that oral acceptance of the [ESCO name]'s offer is an agreement to initiate service and begin enrollment?
  2. Is it [specific date] at [specific time]?
  3. Do you understand that the marketing representative represents [specific ESCO] and that [specific ESCO] is not the Authority?
  4. If the sale was conducted through door-to-door marketing, has the marketer left the premises?
  5. Are you [specify customer's name]/Please state your name (or is your company name [specify company name]/Please state your company's name)?
  6. Do you live at [specific address]/Please state your address (or is your company located at [specify company address]/Please state your company's address)?
  7. Is your email address [specific e-mail address] /Please provide your email address (if the customer chose to provide it)?
  8. Is your Authority account number [specify account number]/ Please state your Authority account number?
  9. Are you the primary account holder or do you have authority to make changes to this account?
  10. If the sale was conducted through door-to-door marketing: did the ESCO marketing representative provide you with the sales agreement, his/her business card or contact information and leave a copy of the ESCO Consumer Bill of Rights?
  11. If the sale was conducted through telemarketing: did the ESCO marketing representative offer to mail you a copy of the ESCO Consumer Bill of Rights or did the ESCO marketing representative tell you how to find the ESCO Consumer Bill of Rights online?
  12. Did you agree to the terms of service as reviewed with you by the [ESCO name] representative on [INSERT ENROLLMENT DATE]?
    - a. The price of \_\_\_\_ (electricity) under the contract is

- \_\_\_ for \_\_\_ months (years).
- b. Or the price of \_\_\_ (electricity) under the contract is a variable rate and will vary month-to-month.
  - c. The early termination fee (if any) is \_\_\_ (this may be a methodology instead of a dollar amount).
13. If savings is guaranteed (compared to the utility rate), a plain description of the type of savings and the conditions that must be present in order for the customer to be eligible for savings. If savings is not guaranteed (as compared to the utility supply service) a statement indicating such;
  14. Please be advised that energy supply will be provided by the ESCO, and that energy delivery shall continue to be provided by your utility and the utility will also be available to respond other emergencies should they occur;
  15. Do you authorize the release of the following information from your Authority: [specify information] and do you understand that you may rescind this authorization at any time by calling [specify toll free number] or e-mailing [specify e-mail address]?
  16. For residential enrollments only: Do you understand that you may rescind the agreement within three business days after its receipt by [describe how such rescission can be accomplished] and if you do not rescind the agreement, an enforceable agreement will be created?
- B. The ESCO, 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.
  - C. The independent third-party verification shall be conducted in the same language used in marketing or sales materials presented to the customer and communicated clearly and in plain language.
  - 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.

**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, its agent, an Energy Broker, or 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:
1. A statement that electronic acceptance of a sales agreement is an agreement to initiate service and begin enrollment;
  2. The Customer Disclosure Statement and the sales agreement containing the prices, terms and conditions applicable to the customer, which, if printed as a physical document, would be substantially the same, in form, and content, as the sample contract submitted to the Department pursuant to Section 2.B.1.b.
  3. If savings are guaranteed, or guaranteed under only certain circumstances, the ESCO must provide a written statement which includes a plain language description of the conditions that must be present in order for the savings to be provided;
  4. An identification number and date to allow the customer to verify the specific sales agreement to which the customer assents;
  5. A statement from the ESCO that energy supply will be provided by the ESCO, and that energy delivery shall continue to be provided by the customer's utility; and that said utility will also be available to respond to other emergencies should they occur;
  6. A requirement that the customer accept or not accept the sales agreement by clicking the appropriate box, displayed as part of the terms and conditions; after the customer clicks the appropriate box to accept the sales agreement, the system shall display a conspicuous notice that the ESCO accepts the customer;
  7. Use of an electronic process that prompts a customer to print or save the sales agreement and provides an option for the customer to request a hard copy of the sales agreement; an ESCO shall send the hard copy by mail within three business days after a customer's request;
  8. A description of the types of information that the ESCO needs to obtain from the Authority and the purposes of its use, a request that the customer provide authorization for release of this information, and the effective duration of the authorization;
  9. A requirement that the customer agree or not agree to provide such authorization by clicking the appropriate box, displayed as part of the terms and conditions;
  10. A statement that a residential customer may rescind the agreement and authorization within three business days after electronic acceptance of the sale agreement; a

statement that a customer may rescind the authorization for release of information at any time; provision of a local or toll-free telephone number, and/or an e-mail address for these purposes; upon cancellation of the agreement, the ESCO shall provide a cancellation number;

11. Verification of the date and time of the electronic agreement and authorization; and
  12. Provision by the customer of the customer's name, address, Authority customer account number, and any additional information to verify the customer's identify.
- 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 shall provide a toll-free telephone number and e-mail address for a customer to request a copy of the sales agreement.
  - E. An ESCO, Energy Broker, or Energy Consultant 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.

**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-LI-ESCO Section 2.B.1.b.2, the following information, as applicable:
1. A statement that a signature on a sales agreement is an agreement to initiate service and begin enrollment;
  2. A description of the specific prices, terms, and conditions of ESCO service applicable to the customer, which is substantially the same, in form and content, as the sample contract submitted to the Department pursuant to Section 2.B.1.b and, if savings are guaranteed, or guaranteed under only certain circumstances, the ESCO must provide a plain language description of the conditions that must be present in order for the savings to be provided;
  3. A description of the types of information that the ESCO needs to obtain from the Authority, the purposes of its use, and effective duration of the authorization;
  4. A statement that acceptance of the agreement is an authorization for release of such information;
  5. A customer signature and date; the sales agreement shall be physically separate from any check, prize or other document that confers any benefit on the customer as a result of the customer's selection of the ESCO;
  6. A statement that a residential customer may rescind the agreement within three business days after signing the sales agreement; a statement that a customer may rescind the authorization for release of information at any time; provision of a local, toll-free telephone number, and/or e-mail address for these purposes; the customer may fax a copy of a signed sales agreement to the ESCO; upon cancellation of the agreement, the ESCO shall provide a cancellation number; and
  7. The customer's name, mail and any e-mail address (if the customer chooses to provide it), Authority account number, and any additional information to verify the customer's identify.
  8. A statement from the ESCO that energy supply will be provided by the ESCO, and that energy delivery shall continue to be provided by the customer's utility; and that said utility will also be available to respond to other emergencies should they occur;
- 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.

**Attachment 4****Sample Customer Disclosure Statement**

Price	
Fixed or Variable and, if variable, how the price is determined	
Length of the agreement and end date	
Process customer may use to rescind the agreement without penalty	
Amount of Early Termination Fee and method of calculation	
Amount of Late Payment Fee and method of calculation	
Provisions for renewal of the agreement	
Conditions under which savings to the customer are guaranteed	
Compensation Disclosure	

**Attachment 5**

**Enrollment and Drop Requests Information Requirements**

- A. An ESCO shall provide the following information for enrollment requests, and an ESCO or Authority shall provide the following information for drop requests:
  - 1. Utility ID (DUNS# or tax ID);
  - 2. ESCO ID (DUNS# or tax ID); and,
  - 3. Customer's utility account number (including check digit, if applicable).
- B. The following information is required for enrollment requests:
  - 1. Customer's bill option;
  - 2. For Authority rate ready consolidated billing:
    - a. an ESCO's fixed charge, supply price, sales and use tax rate or rate code;
    - b. ESCO customer account number;
    - c. budget billing status indicator; and,
    - d. tax exemption percent and portion taxed as residential.
  - 3. For electric service: indicator for a partial requirements customer, if applicable.
- C. The following information is required for drop requests:
  - 1. Reason for the drop;
  - 2. For Authority request, service end date;
  - 3. For ESCO initiated request, effective date of customer move, if applicable.

## **SECTION 6: CUSTOMER INQUIRIES**

### A. Applicability

This Section establishes requirements for responses by an ESCO or Authority to retail access customer inquiries. An ESCO or the Authority shall respond to customer inquiries sent by means of electronic mail, telecommunication services, mail, or in meetings. The subjects raised in inquiries may result in the filing of complaints.

### B. General

1. The Authority and ESCOs shall provide consistent and fair treatment to customers.
2. The Authority and ESCOs shall maintain processes and procedures to resolve customer inquiries without undue discrimination and in an efficient manner and provide an acknowledgement or response to a customer inquiry within 2 days and, if only an acknowledgement is provided, a response within 14 days.
3. The Authority and ESCOs 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.
4. 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 Authority or the ESCO is responsible for assisting the customer.
5. 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:
  - a. Forward/transfer the inquiry to the responsible party;
  - b. Direct the customer to contact the responsible party; or,
  - c. Contact the responsible party to resolve the matter and provide a response to the customer.
6. The Authority and ESCO shall maintain a customer service group to coordinate and communicate information regarding customer inquiries and designate a representative to provide information relating to customer inquiries to the Department.
7. ESCOs may provide a teletypewriter (TTY) system or access to TTY number.

### C. Specific Requests for Information

1. The Authority or ESCO shall respond directly to customer inquiries for any information that is related to supply and/or delivery service, to the extent it has the necessary information to respond.
2. The entity responsible for the accuracy of meter readings shall respond to customer inquiries related to usage.

3. The Authority and ESCO shall respond to customer inquiries about billing and payment processing, in accordance with UBP-LI-ESCO Section 9, Billing and Payment Processing.

D. Emergency Contacts

1. An emergency call means any communication from a customer concerning an emergency situation relating to the distribution system, including, but not limited to, natural disaster, downed wires, electrical contact, or fire.
2. The ESCO CSR shall transfer emergency telephone calls directly to the Authority or provide the Authority's emergency number for direct contact to the Authority. If no ESCO CSR is available, the ESCO shall provide for after-hours emergency contacts, including transfer of emergency calls directly to the Authority or an answering machine message that includes an emergency number for direct contact to the Authority.
3. Each ESCO shall provide periodic notices or bill messages to its customers directing them to contact the Authority in emergency situations and providing the emergency number.

**SECTION 7: AUTHORITY INVOICES****A. Applicability**

This Section establishes procedures for invoices of charges for services provided by the Authority directly to an ESCO or Direct Retail Customer. The Authority and ESCO or Direct Retail Customer may agree to establish other arrangements and procedures for presentation and collection of invoices for services rendered.

**B. Invoices**

1. An ESCO or Direct Retail Customer shall pay the full amount due, without deduction, set-off or counterclaim, within 20 calendar days after the date of electronic transmittal or postmarked date (due date). Subsequent to the due date, charges are overdue and subject to late payment charges at the rate of 1.5% per month. The overdue charges include the amount overdue, any other arrears, and unpaid late payment charges. The Authority may provide, upon request, supporting or back-up data in electronic form, if available on its computer system.
2. The Authority shall provide interest at the rate of 1.5% on an overpayment caused by the Authority's erroneous billing, provided that it may, without applying interest, credit all or a portion of the overpayment to the next bill issued within 30 days and/or refund all or a portion of the overpayment, upon request, within 30 days after its receipt. The Authority shall refund any credit balances, upon request.
3. An ESCO or Direct Retail Customer shall make payments by means of an electronic funds transfer. The Authority shall use any partial payments first to pay any arrears and second to pay current charges.

**C. Billing Inquiries and Disputes**

1. An ESCO or Direct Retail Customer shall make any claims relating to inaccuracies of invoices in writing no later than 90 calendar days after the date of electronic transmittal or postmarked date. ESCOs and/or Direct Retail Customers are responsible for payment of disputed charges during any pending dispute.
2. The Authority shall designate an employee and provide a telephone number and e-mail address for receipt of inquiries from an ESCO or a Direct Retail Customer relating to invoices. The employee shall direct an ESCO or Direct Retail Customer that presents an inquiry or complaint to the responsible and knowledgeable person able to explain charges on an invoice.
3. The Authority shall acknowledge in writing receipt of an inquiry within five calendar days after its receipt. The Authority shall investigate and respond in writing to the inquiry within 20 calendar days after its receipt.
4. The Authority shall refund any overpayments, including interest, within five calendar days after it makes a determination that an ESCO or Direct Retail Customer made an overpayment. It may provide the refund by applying a credit to any overdue amounts or making direct payment of any remainder. The Authority shall provide refunds by means of an electronic funds transfer. Interest is calculated at the rate of 1.5 % per month from the date of the overpayment to the refund.
5. No interest is required on overpayments voluntarily made by an ESCO or Direct Retail Customer to an account, unless an overpayment is applied to security.

**SECTION 8: DISPUTES INVOLVING THE AUTHORITY, ESCOs,  
ENERGY BROKERS/CONSULTANTS, OR DIRECT RETAIL  
CUSTOMERS**

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 Retail 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 involving individual retail customers against either an ESCO or the Authority. 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 the Authority, ESCO, Energy Broker, Energy Consultant, or Direct Retail Customer to submit any dispute to another body with jurisdiction for resolution.

B. Dispute Resolution Processes

The parties shall in good faith use reasonable efforts to resolve any dispute before invoking any of these processes. The Authority's Tariff for Electric Service and operating and service agreements between the parties shall identify the processes used to resolve disputes and shall refer to the dispute resolution processes described in this Section as acceptable processes to resolve disputes.

1. Standard Process

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

The Authority, an ESCO, Energy Broker, Energy Consultant, or Direct Retail 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-LI-ESCO 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.

- a. No later than ten calendar days following receipt of the dispute description, if no mutually acceptable resolution is reached, the opposing party shall provide a written response containing an alternative proposal for resolution with supporting rationale and send a copy to Department Staff.
- b. No later than ten days after receipt of the response, if no mutually acceptable resolution is reached, any party or Department Staff may request that the parties schedule a meeting for further discussions. The parties shall meet no later than 15 calendar days following such request, upon advance notice to Department Staff, unless the parties and Department Staff agree upon another date. The Department may assign one or more Staff members to assist the parties in resolving the dispute.
- c. If no mutually acceptable resolution is reached within 40 calendar days after receipt of the written description of the dispute, any party may request an initial decision from the Department. A party to the dispute may appeal the initial

decision to the Authority's President and Chief Executive Officer.

- d. If the parties reach a mutually acceptable resolution of the dispute, they shall provide to Department Staff a description of the general terms of the resolution.

2. Expedited Process

- a. In the event that an emergency situation arises to justify immediate resolution of a dispute, any party may file a formal dispute resolution request with the Secretary to the Public Service Commission asking for expedited resolution. An emergency situation includes, but is not limited to, a threat to public safety or system reliability or a significant financial risk to the parties or the public. The filing party shall provide a copy of the request to other involved parties and the Department Staff designated to receive information related to dispute resolution under this Section. The request shall describe in detail the emergency situation requiring expedited resolution, state in detail the facts of the dispute, and, to the extent known, set forth the positions of the parties.

## **SECTION 9: BILLING AND PAYMENT PROCESSING**

### A. Applicability

This Section establishes requirements<sup>9</sup> for billing and payment processing options offered by the Authority and ESCO in a multi-retailer model. The Authority and ESCO shall comply with the requirements established in this Section, unless they agree upon modifications or other procedures for billing and payment processing in a Billing Services Agreement.

### B. Billing and Payment Processing Options: General Requirements

1. The Authority shall offer to ESCOs without undue discrimination the billing and payment processing options available in its service territory.
2. A customer participating in a retail access program shall select from the billing and payment processing options offered by ESCOs.
3. The Authority shall allow its customers to select, through their ESCOs, one of the billing and payment options available in the Authority's service territory. An ESCO may offer to its customers billing and payment processing options available in the customer's service territory and shall maintain or provide for the capability of issuing a separate bill for its services under the dual billing option. An ESCO customer may direct the Authority to send its consolidated bills or dual bills to a third party for processing and payment. Consolidated billing is not available to ReCharge NY Customers at this time.
4. The Authority will perform the responsibilities of billing a customer of an ESCO based upon the billing and payment processing options available to the customer and the customer's choice.
5. The Authority shall make validated usage information available to an ESCO at the time that the Authority determines that the information is acceptable.<sup>10</sup>
6. Information on customer usage, billing, and credit is confidential. The Authority may release such information, upon a customer's authorization, in accordance with the UBP-LI-ESCO Section 5, Changes in Service Providers.
7. The Authority and ESCO shall demonstrate the technical capability to exchange information electronically for their billing and payment processing options.
8. An ESCO shall provide 60 calendar days' notice by mail, e-mail or fax to the Authority of any plan to offer a billing option that is not currently offered to its customers. The Authority may agree to a shorter notice period preceding initiation of the option. The 60 calendar-day notice shall not impose any obligation on any party to proceed without a successful test of data exchange capability and the fulfillment of other obligations described in this Section. If an ESCO later changes its system, it shall provide adequate advance notice and conduct any additional testing required.

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<sup>9</sup> The requirements are applicable when EDI is available upon issuance by the Commission of data standards applicable to a bill model and operational upon successful completion of the testing required for a bill model.

<sup>10</sup> The Authority shall provide electronic interval data in summary form (billing determinants aggregated in the rating periods under the Authority's tariffs) via EDI and, if requested, or if EDI is not available, in detail via an acceptable alternative electronic format if retrieved from meters.

9. The Authority and an ESCO are responsible for separately remitting their tax payments to the appropriate taxing authorities.
10. Where the Authority is the consolidated billing party, the Authority is not required to support processing of prepayments or application of customer prepayments to ESCO charges.

C. Consolidated Billing: General Requirements

1. The Authority and ESCO shall establish in a Billing Services Agreement (BSA) detailed expectations for their responsibilities, including consequences for any failure to carry out such responsibilities.
2. The Authority will use the rate ready method<sup>11</sup> for issuing consolidated bills.
3. Consolidated billing is not available for ReCharge NY Customers at this time.

D. Consolidated Billing: Functions and Responsibilities

1. The Authority shall perform the following functions and responsibilities<sup>12</sup>:
  - a. If the rate ready method is used, receive rates, rate codes and/or prices (fixed and/or variable) and other billing information from the ESCO;
  - b. Receive bill messages from the ESCO;
  - c. If the rate ready method is used, calculate billed charges, including sales and use taxes; the ESCO is required to provide the customer's sales and use tax rate to the Authority;
  - d. Print or make available electronically consolidated bills that state the ESCO's charges, including taxes, arrearages, late fees, and bill messages.
  - e. Insert in bill envelopes consolidated bills and inserts required by statute, regulation or Public Service Commission order;
  - f. Stamp, sort and mail consolidated bills or, if authorized, transmit bills electronically;
  - g. Cancel and rebill charges;
  - h. Notify the ESCO of amounts billed, by account, within two business days after rendering bills to customers;
  - i. Receive and record customer payments;
  - j. Allocate and transmit the ESCO's share of receipts, by account, to the ESCO;
  - k. Respond to general inquiries and complaints about the bill and its format; refer customers to the ESCO for inquiries and complaints related to the ESCO's rates, charges, services, or calculations; and,
  - l. Maintain records of billing information, including amounts collected, remaining and transferred, and dates.
2. To initiate consolidated billing using the rate ready method, the ESCO shall provide the Authority with the rates, rate codes, and/or prices (fixed and/or variable) and tax rates necessary to calculate the ESCO's charges. The Authority shall specify in the

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<sup>11</sup> An ESCO operating in the LIPA service territory may not perform any billing functions on behalf of the Authority under a Consolidated Billing option.

<sup>12</sup> The Authority, when providing the rate ready method for utility consolidated billing is not obligated to calculate or bill separately for other goods and services that an ESCO may provide.

BSA the number of prices for each service class accepted, deadline for transmission, effective date, and acceptable frequency of changes.<sup>13</sup>

3. The Authority may process special handling requests from customers provided that it obtains agreement from the ESCO for requests that affect it;
4. The Authority is not required to calculate or provide separate statements to customers regarding gross receipts taxes applicable to an ESCO's charges. The ESCO may calculate and provide information on the gross receipts taxes applicable to its charges in a bill message.

#### E. Consolidated Billing: Content

1. The Authority may decide upon the format for its consolidated bill provided that it states a summary of total charges and separately states Authority and ESCO charges in sufficient detail to allow a customer to judge their accuracy. Such separate statements shall appear in clearly separated portions of the bill and identify their source, Authority or ESCO.
2. A consolidated bill shall contain the information listed in Attachment 1, General Information, preferably in a summary section. The Authority may place the information on the bill in any order or location.
3. A consolidated bill shall contain the information listed in Attachment 2, Authority Content.
4. A consolidated bill shall contain the information listed in Attachment 3, ESCO Content, separately stated for each ESCO.
5. If the rate ready method is used, the ESCO shall provide to the Authority information listed in Attachment 3, ESCO Section Content, to the extent necessary for the Authority to calculate and issue bills. To initiate utility consolidated billing using the rate ready method, an ESCO shall provide the information to the Authority on or before 15 calendar days prior to the scheduled meter reading date. An ESCO may request a price or rate change no later than four business days prior to its effective date.
6. If the Authority and ESCO agree to show the ESCO's logo on the bill, the ESCO shall provide it in an acceptable electronic format at least thirty days before its initial use.
7. If the rate ready method is used, an ESCO is not required to provide information after it is initially submitted, except when a change is made.
8. No party shall engage in cramming.
9. An ESCO may display its bill messages up to 480 characters in length on the bill provided that the Authority raises no reasonable objection to the message. There is no limit in message length for the Authority. If the rate ready method is used, an ESCO shall submit to the Authority a common bill message on or before 15 calendar days before the date used. Unless a final print date is provided, the Authority shall continue to print the message on bills until the ESCO transmits a different message or requests its

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<sup>13</sup> If the Authority's billing system is capable of providing the service, the Authority shall, upon request, apply a different rate, rate code, and/or price and tax rate to usage during different portions of the billing cycle to service provided after the effective date of the change. The ESCO shall request a change in the rate, rate code, and/or price no later than four business days prior to the effective date requested.

discontinuance. In emergencies requiring printing of messages on bills, the Authority shall accommodate the needs of the ESCO, if practicable.

10. The Authority shall, in a timely manner, print on bills or insert into bill envelopes information that a statute, regulation, or to be consistent with a Public Service Commission order, the Authority or ESCO to send to its customers. The Authority may not assess charges for inclusion of required inserts that do not exceed one-half ounce. The Authority may charge for any excess weight. The party responsible for providing the information shall submit it to the Authority. If the information is provided in a bill insert, the responsible party shall deliver the inserts in preprinted bulk form in a proper size on or before 15 calendar days before the date requested for initiation of distribution to customers to a location designated by the Authority.
11. Due dates and other general payment terms and conditions shall be identical for Authority and ESCO charges, unless different terms and conditions would have no impact on them. In the event of a conflict, the Authority's payment terms and conditions shall govern.

F. Consolidated Billing: Bill Issuance

1. No late charge may be applied to customers' bills for Authority charges, if payment is received within the grace period. If the rate ready method is used, the ESCO shall transmit any revisions in rate and/or price data to the Authority on or before four business days prior to the prescribed date.
2. If a rate ready method is used, the Authority shall render a bill in accordance with the Authority's regular bill issuance schedule. A bill is rendered upon transfer to the custody of the U.S. Postal Service or other delivery service or, if authorized by a customer, sent electronically to a valid e-mail address or telefax number, displayed on a secure website, or presented directly to the customer or customer's representative.
3. If the rate ready method is used, the Authority shall provide to the ESCO within two business days after bill issuance, a statement of the accounts billed, date of issuance and amount of the ESCO's charges shown on the bill (past due, current, and late payment charges and taxes).

G. Consolidated Billing: Cancellations and Rebills

1. If ESCO errors occur and are not corrected before the bill is issued, the Authority is not required to cancel bills or issue new bills. The ESCO shall provide any necessary explanations to the customer and the Authority and make any necessary adjustments on the next bill.
2. If no party errs, the parties may agree to cancel and rebill.
3. To cancel a bill, the Authority shall:
  - a. Cancel usage by billing period;
  - b. Send consumption in the cancel transaction that matches consumption sent in the original transaction;
  - c. Send cancelled usage at the same level of detail as the original usage;
  - d. Using the rate ready method, if a bill is to be cancelled and reissued, recalculate charges and issue revised bills to customers within two business days after receipt of the revised usage data;

4. To restate usage for a period, the Authority shall first cancel usage for that period and then send the full set of restatement transactions.
- H. Consolidated Billing: Payment Processing and Remittance
1. The parties shall set forth their responsibilities, performance parameters, financial arrangements and other details associated with payment processing and remittance in a BSA. A BSA shall establish procedures for processing payments made on any purchased accounts receivable.
  2. Payment Processing
    - a. The Authority may impose late payment charges on unpaid amounts not in dispute.
    - b. If a customer's check is returned for any reason, the Authority may charge the customer's account for the return fee and any reasonable administrative fee.
  3. Application of payments
    - a. The Authority may retain any payment amounts in excess of the amounts due as prepayments for future charges or return the excess amounts to customers.
  4. Customer Disputes: Initiating a Bill Complaint
    - a. A customer or authorized representative may initiate a customer complaint regarding some or all of the charges on the customer's bill at anytime.
    - b. When a complaint relates to the entire bill, to only the Authority's charges or services, or, using the rate ready method, to calculation of the Authority or ESCOs charges, the customer should contact the Authority. The Authority shall resolve the complaint and, if appropriate, place the customer's account in dispute. In the event the inquiry concerns only a ESCO's bill, charges, services, or calculations, the Authority shall refer the customer to the ESCO.
  5. Customer Complaints: Notification
    - a. Upon a determination that a complaint affects the entire bill, the Authority shall notify the ESCO of the subject and amount in dispute, if known.
    - b. The ESCO shall inform the Authority of disputes related to ESCO charges that would affect the billing process.
    - c. Once such complaints are resolved and the billed amounts are no longer in dispute, the other party shall be notified.
- I. Consolidated Billing: Call Centers
- The Authority shall provide call centers with toll-free or local telephone access available 24 hours a day and an answering machine or voice mail service during the hours when call center staff is not available. The Authority shall maintain adequate staff to respond to customers' inquiries or refer inquiries to the ESCO, where appropriate, within two business days.
- J. Dual Billing
1. The Authority and ESCO, acting as separate billing parties, shall render separate bills directly to the customer or the customer's representative. The customer or its representative shall pay the Authority and the ESCO separately.
  2. The Authority's bill shall conform to the standards set by the Public Service

Commission.

3. The Authority shall transmit usage data to the ESCO at the time the information is available for rendering bills to customers, which may or may not coincide with meter reading cycle dates.
4. The ESCO may decide upon its bill format provided that it states its charges in sufficient detail to allow customers to judge the accuracy of their bills. At a minimum, an ESCO shall provide the following information:
  - a. Customer's name and billing address and, if different, service address;
  - b. Customer's account number or ID;
  - c. Period or date associated with each product or service billed;
  - d. Name of the entity rendering the bill;
  - e. Address to which payments should be sent or the location where payments may be made;
  - f. Local or toll-free number for billing inquiries; if an ESCO enrolls and communicates with customers electronically, an e-mail address and telephone number with area code;
  - g. Due date for payment and a statement that late payment charges shall apply to payments received after the due date; and
  - h. Amount and date of payments received since the last bill.
5. Whenever the Authority cancels consumption for an account, it shall provide a notice of cancellation and restated billing parameters for the account to an ESCO and the Authority, if applicable, and shall:
  - a. Cancel usage by billing period;
  - b. Send consumption in the cancel transaction that matches consumption sent in the original transaction;
  - c. Send cancelled usage at the same level of detail as the original usage; and,
  - d. To restate usage for a period, cancel usage for that period and send the full set of billing parameter restatements.

**Attachment 1****General Information**

- A. Customer name
- B. Service address
- C. Billing address, if different than service address
- D. Authority account number, if any
- E. Start of billing cycle period (prior meter reading date for metered customers)
- F. Starting period meter reading (for metered customers)
- G. End of billing cycle period (current meter reading date for metered customers)
- H. Ending period meter reading (for metered customers)
- I. Billing period metered usage, any multiplier necessary to convert usage to billing units and resulting billing units (for metered customers)
- J. Billing period demand, if applicable
- K. Indicators, if usage is estimated, actual or customer provided
- L. Total current charges (total of the Authority and ESCO charges, including late charges and taxes)
- M. Total prior billed charges (total of the Authority and ESCO prior bill charges, including prior late charges and taxes)
- N. Total credits since last bill (total of the Authority and ESCO credits);
- O. Date through which the credits are applied
- P. Total current bill (total of the Authority and ESCO charges plus prior bill charges less credits)
- Q. Billing party name
- R. Billing party address
- S. Billing party toll-free or local telephone number, and for the Authority that enrolls and communicates electronically with customers, an e-mail address and telephone number with area code, in lieu of a toll-free or local telephone number
- T. Authority toll free-or local telephone number and emergency telephone number
- U. Method and location for payments
- V. Date of bill
- W. Payment due date
- X. The Authority's messages of any length that apply in general to the bill and services provided by the Authority and ESCO, that are not reasonably objectionable to the parties.

**Attachment 2**

**Authority Content**

- A. Authority name, and logo, if the parties agree
- B. Authority address
- C. Authority toll-free or local telephone number for inquiries about the Authority's portion of the bill and the Authority's emergency number
- D. Authority customer account number
- E. Authority utility rate classification identifier
- F. Authority utility rates per billing unit, if applicable
- G. Authority rates not based on billing units, if applicable, and unbundled, if applicable
- H. Authority charge adjustments and adders, separately stated
- I. Taxes on Authority's charges, if separately stated
- J. Billing period total Authority charges
- K. Prior billing period total Authority charges, including any prior late charges
- L. Credits on prior Authority utility charges
- M. Net prior Authority balance remaining, unless included in total prior billed charges stated in the General Information Section
- N. Late charge for unpaid prior Authority balance, unless included in total prior billed charges stated in the General Information Section
- O. Total amount due for the Authority's services
- P. If a budget bill, applicable billing information and resulting budget bill amount due for Authority's services

**Attachment 3****ESCO Content**

- A. ESCO name and logo, if parties agree
- B. ESCO address
- C. ESCO toll-free or local telephone number for billing inquiries; ESCOs that enroll and communicate electronically with customer may provide an e-mail address and telephone number with area code in lieu of a toll-free or local telephone number; if a rate ready method is used, the Authority shall include a notice directing ESCO customers to call the Authority first to clarify bill calculations
- D. ESCO account number,
- E. ESCO rate classification, if applicable
- F. ESCO rate per billing unit, if applicable
- G. ESCO rate not based on Authority unit, if applicable
- H. ESCO charge adjustments and adders, if any, separately stated
- I. Taxes on ESCO charges, if required to be separately stated
- J. Billing period total ESCO charges
- K. Prior billing period total ESCO charges, including any prior late charges, unless included in total prior billed charges stated in the General Information Section
- L. Credits on prior ESCO charges
- M. Net prior ESCO balance remaining
- N. Total amount due for ESCO services
- O. If a budget bill, applicable billing information and resulting budget bill amount due
- P. The ESCO's bill message, if any, up to 480 characters.

## **SECTION 10: MARKETING STANDARDS**

### A. Applicability

This Section describes the standards that ESCOs and ESCO marketing representatives must follow when marketing to customers in New York.

### B. Training of Marketing Representatives

1. ESCOs shall ensure that the training of their marketing representatives includes:
  - a. Knowledge of this Section and awareness of the other Sections of the New York Uniform Business Practices;
  - b. Knowledge of the ESCO's products and services;
  - c. Knowledge of ESCO rates, payment options and the customers' right to cancel, including the applicability of an early termination fee;
  - d. Knowledge of the applicable provisions of the Home Energy Fair Practices Act that pertains to residential customers; and,
  - e. The ability to provide the customer with a toll-free number from which the customer may obtain information about the ESCO's mechanisms for handling billing questions, disputes, and complaints.

### C. Contact with Customers

#### 1. In-Person Contact with Customers<sup>14</sup>

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

- a. Introduce him or herself with an opening statement that identifies the ESCO which he or she represents as an Energy Services Company, identifies him or herself as a representative of that specific ESCO; explains that he or she does not represent the Authority; and, explains the purpose of the solicitation.
- b. Produce identification, to be visible at all times thereafter, which:
  1. Prominently displays in reasonable size type face the first name and employee identification number of the marketing representative;
  2. Displays a photograph of the marketing representative and depicts the legitimate trade name and logo of the ESCO they are representing;
  3. Provides the ESCO telephone number for inquires, verification and complaints.
- c. During the sales presentation, the marketing representative must also state that if customer purchases electricity from the ESCO, that the customer's utility will continue to deliver their energy and will respond to any emergencies. This requirement may be fulfilled either (a) by an oral statement by the ESCO marketing representative, or (b) written material left by the ESCO marketing representative.
- d. An ESCO marketing representative must provide each prospective residential

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<sup>14</sup> Including but not limited to marketing encompassed in the definition of door to door sales.

customer a business card or similar tangible object with the ESCO marketing representative's first name and employee identification number; ESCO's name, address, and phone number; date and time of visit and website information for inquires, verification and complaints.

- e. An ESCO marketing representative 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 ESCO marketing representative makes his or her sales presentation.
  - f. An ESCO marketing representative must provide the customer with written information regarding ESCO products and services immediately upon request which must include the ESCOs name and telephone number for inquires, verification and complaints. Any written materials, including contracts, sales agreements, marketing materials and the ESCO Consumers Bill of Rights, must be provided to the customer in the same language utilized to solicit the customer.
  - g. 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 ESCO marketing representative or where the customer or another third party informs the ESCO marketing representative of this circumstance, the ESCO marketing representative shall either find a representative in the area who is fluent in the customer's language to continue the marketing activity in his/her stead or terminate the in-person contact with the customer. The use of translation services and language identification cards is permitted.
  - h. An ESCO marketing representative must leave the premises of a customer when requested to do so by the customer or the owner/occupant of the premises.
  - i. As stated in Section 5.B.2, for any sale resulting from door-to-door marketing, each enrollment is only valid with an independent third-party verification in conformance with Section 5, Attachment 1. The verification must occur after the marketing agent has left the customer's premises and must be completed before the ESCO may enroll a customer.
  - j. All ESCOs who have ESCO marketing representatives conducting door-to-door marketing must maintain a daily record, by zip code, of the territories in which the ESCO's marketing representatives have conducted door-to-door marketing. The information should be in a form that can be reported to Staff upon request and should be retained by the ESCO for a minimum of six months.
2. Telephone Contact with Customers
- ESCO marketing representatives who contact customers by telephone for the purpose of selling any product or service offered by the ESCO shall:
- a. Provide the ESCO marketing representative's first name and, on request, the identification number;
  - b. State the name of the ESCO on whose behalf the call is being made;
  - c. Never represent that the ESCO marketing representative is an employee or representative or acting on behalf of the Authority. In addition, the ESCO marketing representative must clearly indicate that taking service from an ESCO will not affect

the customer's service with the Authority and such service will continue to be provided by the Authority;

- d. State the purpose of the telephone call;
  - e. Where it is apparent that the customer's English language skills are insufficient to allow the customer to understand and respond to the information conveyed by the ESCO representative or where the customer or another third party informs the ESCO marketing representative of this circumstance, the ESCO marketing representative will immediately transfer the customer to a representative who speaks the customer's language, if such a representative is available, or terminate the call; and,
  - f. Remove Customers' names from the marketing database upon Customers' request.
  - g. When marketing to residential customers the ESCO marketing representative must also:
    1. Explain that he or she does not represent the Authority;
    2. Explain the purpose of the solicitation;
    3. Notify each prospective 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; and,
    4. Provide any written materials, including contracts, sales agreements, marketing materials and the ESCO Consumers Bill of Rights, must be provided to the customer in the same language utilized to solicit the customer.
  - h. As stated in Section 5.B.2, 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.
3. Electronic Enrollments
- a. When marketing to residential customers 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.
4. Conduct
- ESCOs shall:
- a. Not engage in misleading or deceptive conduct as defined by State or federal law, or by Commission rule, regulation, or Order;
  - b. Not make false or misleading representations including misrepresenting rates or savings offered by the ESCO;
  - c. 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;
  - d. 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 Section 2

- of the UBP-LI-ESCO and any other relevant Section;
- e. Ensure that any product or service offerings that are made by an ESCO 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 ESCO representative has substantive discussions with the customer or in which a contract is negotiated;
  - f. Investigate customer inquiries and complaints concerning marketing practices within five days of receipt of the complaint; and,
  - g. Cooperate with the Department and PSC regarding marketing practices proscribed by the UBP-LI-ESCO and with local law enforcement in investigations concerning deceptive marketing practices.
  - h. Not contract with or otherwise do business with Energy Brokers and Energy Consultants that are not registered with the Commission pursuant to LIPA UBP Section 11. Customer enrollments facilitated by an unregistered Energy Broker or Energy Consultant shall be invalid.
5. Dispute Resolution
- a. ESCOs will 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.

## **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](http://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 agreement between the Energy Broker or Energy Consultant and the customer;

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 or proof of an assumed name certificate (DBA) filed with the county clerk;
- h. Proof of registration to act as a marketer in any municipality where such registration is required;
- i. An annual \$500 registration fee;
- j. A demonstration of financial accountability in the form of either:
  - i. An irrevocable standby letter of credit issued by a reputable financial institution in the amount of \$100,000 for registering Energy Brokers; and \$50,000 for registering Energy Consultants, that meet the following conditions:
    1. The New York State Department of Public Service shall be named as beneficiary and the letter of credit applicant shall be clearly named;
    2. Any number of partial drawings shall be permitted from time to time;
    3. The process for making a drawing, including any required forms and communications or delivery instructions shall be stated;
    4. If a drawing is made, payment shall be made to the beneficiary within 5 business days;
    5. Any expiration date shall be specified and options for renewal, including automatic renewal, shall be stated.
    6. The applicant's filing for bankruptcy, receivership, or any other debt-relief petition shall in no way affect the issuer's liability to the beneficiary under the letter of credit.
    7. All commissions, fees, and other charges with respect to the letter of credit shall be paid by the applicant;
    8. Except for increases to the amount, the letter of credit shall not be amended, changed, or modified without express written consent of the beneficiary;
    9. The beneficiary shall not be deemed to have waived any rights under the letter of credit unless an authorized representative thereof has signed a dated written waiver. No such waiver, unless expressly stated therein, shall be effective as to any subsequent transaction, nor to any continuance of a breach; and
    10. If the beneficiary should require a replacement of the letter of credit due to loss or destruction of the original, the issuer will provide one upon request.
  - ii. A surety bond issued by a reputable financial institution on a form to be prescribed by the Department with a penal sum of \$100,000 for registering Energy Brokers; and \$50,000 for registering Energy Consultants, that meets the following conditions:
    1. The New York State Department of Public Service shall be named as the obligee;
    2. As a condition of the bond, the applicant and its employees are required to comply with all applicable provisions of the laws of the State of New York and the rules, regulations, and orders of the Commission and of the Department, including, but not limited to, the Uniform Business Practices and the Uniform Business Practices for Distributed Energy Resource Suppliers;

3. If the applicant breaches the bond's conditions, the Department may recover against the bond for the reimbursement of fees or other charges that the Department has determined were improperly collected from customers; for the payment of past due fees or other charges owed by the applicant to the Department, including any unpaid penalties; and for any customer reimbursements or other remedial or financial obligations of the applicant in the event of the applicant's insolvency, liquidation, or bankruptcy or the expiration, surrender, or revocation of the applicant's registration;
4. Immediately upon recovery on any claim or action on or under the bond, the applicant shall file a new or supplemental bond restoring the face amount of the bond to the required amount;
5. The bond shall be continuous and shall remain in force until the surety is released from liability by the Department or until the bond is canceled by the surety. Without prejudice to any liability accrued prior to the cancellation, the surety may cancel the bond on ninety days' advance notice in writing sent by mail to the applicant and to the Department;
6. The bond's termination shall not terminate or otherwise affect any liability of the applicant or its employees to its customers or to the Department;
7. The surety will give prompt notice to the applicant and to the Department of any notice received or action filed alleging the insolvency or bankruptcy of the surety or alleging any violations of regulatory requirements which could result in suspension or revocation of the surety's authority to do business. In the event the surety becomes unable to fulfill its obligation under the bond for any reason, notice shall be given immediately to the applicant and to the Department;
8. All commissions, fees, and other charges with respect to the surety bond shall be paid by the applicant.

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; and

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. An Energy Broker or Energy Consultant shall submit by August 31st each year:
  - 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.1.1 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. In instances where the Energy Broker or Energy Consultant does not have a direct contractual relationship with the customer, an Energy Broker or Energy Consultant shall disclose to the customer in a separate, written communication any fee splitting arrangement, including the third party receiving the fee and the amount or percentage of fee that the third party will receive.

e. If a third party, such as an ESCO or DERS, collects compensation on behalf of the Energy Broker or Energy Consultant or provides compensation to 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 form, amount and/or 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. No Energy Broker, Energy Consultant or any other person acting for or on behalf of the Energy Broker or Energy Consultant shall offer or make, directly or indirectly, any rebate of any portion of the fee, premium or charge made, or pay or give to any applicant, or to any person, firm, or corporation acting as agent, representative, attorney, or employee of the energy ratepayer or any interest therein, either directly or indirectly, any commission, any part of its fees or charges, or any other consideration or valuable thing, as an inducement for, or as compensation for, any energy supply or energy-related business.

i. An applicant; any person, firm, or corporation acting as agent, representative, attorney, or employee of the energy ratepayer or of the prospective energy ratepayer; or anyone having any interest in the real property shall not knowingly receive, 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 Inquiries

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 Commission rules.

#### H. 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's 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 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 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 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 10, ESCOs are prohibited from doing business with unregistered Energy Brokers and Energy Consultants. This Section describes the standards that ESCOs and ESCO marketing representatives must follow when marketing to customers in New York.