

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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

ORDER ESTABLISHING OVERSIGHT FRAMEWORK AND UNIFORM BUSINESS
PRACTICES FOR DISTRIBUTED ENERGY RESOURCE SUPPLIERS

Issued and Effective: October 19, 2017

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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on October 19, 2017

COMMISSIONERS PRESENT:

John B. Rhodes, Chair
Gregg C. Sayre
Diane X. Burman
James S. Alesi

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BY THE COMMISSION:

INTRODUCTION

Through the Reforming the Energy Vision (REV) initiative, the Commission has set the stage for increased deployment and integration of Distributed Energy Resources (DERs) for the benefit of the energy system, the environment, and customers. As DERs become an increasingly common and significant part of electric and gas service to customers, the Commission has the responsibility of ensuring that customers participating in DER markets and programs understand the costs and benefits of their investments and are protected from confusion, fraud, and abusive marketing. Furthermore, clear and robust guidance on appropriate marketing and contracting practices will create a level playing field for DER suppliers and support fair competition between suppliers and between various DER options. The Commission concludes that a manual of

Uniform Business Practices (UBP) can effectively serve that purpose.

As described in the VDER Phase One Order, clear rules are necessary to ensure that customers participating in DER markets and programs, particularly community distributed generation (CDG) projects, are not subject to fraud or abusive marketing.¹ The Commission's experience in regulating energy services companies (ESCOs) in the gas and electric supply market has demonstrated that oversight is needed to prevent false promises, exploitative pricing, and other deceptive or intentionally confusing behavior in marketing to residential customers and small businesses. A clear and consistent process for managing complaints and investigating and addressing violations will ensure that both customers and DER suppliers understand their rights and responsibilities. Finally, requirements regarding reporting and responding to information requests are necessary to ensure that Department of Public Service Staff (Staff) and the Commission have the tools needed to monitor these growing markets and identify and resolve potential issues.

At the same time, the Commission is mindful of the need to avoid unnecessary or overly burdensome obligations, particularly with respect to small DER suppliers. The success of the REV initiative depends on innovative individuals and businesses exploring and deploying new products and services. Many of those innovative suppliers will be small businesses whose financial vitality can be threatened by application of overly complex and burdensome regulatory requirements. Some may

¹ Cases 15-E-0751 et al., Value of Distributed Energy Resources, Order on Net Metering Transition, Phase One of Value of Distributed Energy Resources, and Related Matters (VDER Phase One Order) (issued March 9, 2017), pp. 141-142.

be offering software or shipping products nationally and have limited ability to deal with state-specific requirements. Certain elements of the Staff proposals on DER oversight caused concern that such businesses could be effectively barred from participation in the New York market.

For the above reasons, this Order carefully tailors oversight to the characteristics of different market sectors. Specifically, as compared with the Staff proposals, it limits oversight of transactions with large industrial or commercial customers to prohibitions on fraud and requirements regarding customer consent; it applies a limited, "passive" set of regulations to most DER suppliers, while more comprehensively regulating CDG and on-site mass market DG; and it eliminates certain proposed requirements that were identified as particularly burdensome and not sufficiently justified by an urgent need, including proposed bonding and capitalization requirements.

The UBP-DERS is attached in its entirety as Appendix A, and shall be included as an addendum in every utility tariff. These requirements are part of a framework of regulation and contractual agreements, including interconnection agreements and tariffs, which will govern the integration of DERs into New York's electric system, as well as the rights and responsibilities of DER suppliers. As markets continue to evolve, these requirements will require and receive ongoing review and modifications to ensure that customers are appropriately protected and that DER markets are able to thrive.

BACKGROUND

In the REV Framework Order, the Commission directed Staff to develop proposed rules for oversight of DER suppliers,

in consultation with stakeholders.² These proposed rules were required to include a dispute resolution mechanism to expedite review and action on disputes between DER suppliers and utilities.

Staff reviewed the UBP applicable to ESCOs to determine the extent to which those requirements should be applicable to DER suppliers. It also reviewed oversight of DER suppliers in other jurisdictions to identify any best practices. Staff developed an outline of proposed requirements to be applicable to DER suppliers, as well as detailed questions requiring stakeholder consideration, and discussed those issues at a technical conference on May 12, 2015. DER suppliers, ESCOs, utilities and representatives of consumers actively participated in that conference. After taking that input into consideration, Staff issued a Staff Proposal for public comment on July 28, 2015, including a proposed rulebook, the Uniform Business Practices for Distributed Energy Resource Suppliers (UBP-DERS). Staff led a technical conference on that proposal on August 20, 2015, in which DER suppliers, ESCOs, utilities, and representatives of consumers participated. Comments on the Staff Proposal were received from 24 stakeholders.

In addition, as part of its consideration of issues related to the participation of low-income customers in CDG programs, Staff developed proposals regarding a Standardized Customer Disclosure Statement and the applicability of Home Energy Fair Practices Act (HEFPA) provisions to CDG projects. These proposals were issued for comment in the December 5, 2016 Notice Soliciting Comments Concerning Community Distributed

² Case 14-M-0101, Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision, Order Adopting Regulatory Policy Framework and Implementation Plan (issued February 26, 2015) (REV Framework Order), at pp. 8-10.

Generation for Low-Income Customers (CDG Low-Income Notice) in Case 15-E-0082. Nine comments were received on these issues.

In the VDER Phase One Order, the Commission emphasized the importance of DER oversight but also recognized that substantial time had passed since the technical conference and the filing of comments.³ The Commission explained that, in that time, REV and DER markets had undergone significant evolution. The Commission therefore directed Staff to file an updated whitepaper on DER oversight for public comment.

In response to that directive, Staff filed a Supplemental Staff Whitepaper on DER Oversight (the Supplemental Whitepaper) on April 11, 2017, which considered both the comments received on the original Staff Proposal and new developments in DER and REV markets. Staff proposed an updated model for DER Oversight, which includes requirements applicable to the relationships between DER suppliers and their end-user customers, as well as requirements applicable to the relationships between DER suppliers and utilities. The Supplemental Whitepaper focused on certain aspects of the original Staff Proposal and solicited additional comments on both that Proposal and the Supplemental Whitepaper. Staff subsequently led a technical conference on June 19, 2017, in which DER suppliers, ESCOs, utilities, and representatives of consumers participated. Thirty-three comments, including reply comments, were received on the Staff Proposal.

NOTICES OF PROPOSED RULEMAKING

Pursuant to State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rulemaking was published in the State Register on August 12, 2015 [SAPA No. 15-M-0180SP1]. On

³ Cases 15-E-0751 et al., supra, VDER Phase One Order.

July 28, 2015, a Notice Seeking Comments was issued establishing a deadline by which to submit initial and reply comments. The time for submission of comments expired on October 19, 2015. Comments were received from 24 stakeholders representing a wide variety of sectors. For the Supplemental Whitepaper, a Notice of Proposed Rulemaking was published in the State Register on May 3, 2017 [SAPA No. 15-M-0180SP2]. On April 12, 2017, a Notice Seeking Comments was issued establishing a deadline by which to submit initial and reply comments. On May 26, 2017, an extension of the comment deadlines was granted. The time for submission of comments expired on June 27, 2017. Comments were received from 21 stakeholders representing a wide variety of sectors.

The comments and reply comments received in response to the August 12, 2015 Notice and the April 12, 2017 and May 26, 2017 Notices, as well as the CDG Low-Income Notice, are addressed in the body of the Order where relevant. A list of commenters, along with the short names used for them in this Order, appears in Appendix E.

DISCUSSION

In this Order, the Commission determines that oversight of DER suppliers is necessary and appropriate but must be carefully tailored to the characteristics and needs of each market segment. It establishes a general framework for oversight of DER suppliers, which contains "passive" requirements ensuring that the Commission and Staff have the ability to address fraud and other abusive practices without requiring DER suppliers to take any affirmative actions or change their business practices. It also puts in place a more specific and detailed set of requirements that are applied only

to CDG and on-site mass market distributed generation (DG) providers at this time.

The UBP-DERS, attached to this Order as Appendix A and adopted through this Order, includes both sets of requirements. It is broken up into three sections: Section 1, which contains definitions for the terms used throughout the document; Section 2, which contains requirements applicable to all DER suppliers; and Section 3, which contains requirements applicable only to CDG and on-site mass market DG providers.

Several appendices are attached to this Order. Appendix A is the UBP-DERS as adopted by this Order and includes Standard Disclosure Forms for CDG and On-Site Mass Market DG Providers as Attachment 1. Appendix B is a chart summarizing the UBP-DERS provisions applicable to each market segment. Appendix C summarizes provisions of the HEFPA that apply to DER suppliers and describes the circumstances where each would apply.

I. Legal Authority

A. Comments

The JU and UIU strongly agree with the determination in the REV Framework Order that the Commission has broad authority to regulate DERs - including to establish uniform business practices for DERs - both under the Public Service Law (PSL) and because the Commission has authorized the programs or markets in which DERs will operate. However, commenters from the DER community and groups like AEA, EDF, and PACE, question whether the Commission has the authority to regulate DERs, or whether broad oversight could stifle nascent and existing markets like CDG and energy efficiency. Some DER providers argue that existing statutory provisions only cover businesses, like utilities and ESCOs, that sell or furnish electricity.

B. Determination

The Commission determined in the REV Framework Order that the PSL grants the Commission legal authority to regulate DER suppliers.⁴ As described in that Order, PSL §2(13) defines an electric corporation as any corporation that owns, operates, or manages "any electric plant . . . except where electricity is generated or distributed by the producer solely on or through private property . . . for its own use or the use of its tenants and not for sale to others." PSL §2(12) defines electric plant to include "all real estate, fixtures and personal property operated, owned, used or to be used for or in connection with or to facilitate the generation, transmission, distribution, sale or furnishing of electricity for light, heat or power" Therefore, corporations are subject to the jurisdiction of the Commission under Article 1 of the PSL to the extent that they "furnish" or "facilitate the generation, . . . sale or furnishing of" electricity.⁵ Pursuant to PSL §53, Article 2 of the PSL, referred to as HEFPA, similarly applies to "any entity that, in any manner, sells or facilitates the sale or furnishing of gas or electricity to residential customers."

Many DER suppliers clearly fit these definitions of an "electric corporation."⁶ For example, CDG providers and other distributed generation providers either sell energy directly through power-purchase agreements (PPAs) or sell or lease electric generating equipment. Other DER suppliers, for example through demand management, demand response, or energy storage products or services, offer services to utilities or electric

⁴ Case 14-M-0101, supra, REV Framework Order at pp. 8-10.

⁵ "Gas corporations" are similarly defined in PSL §§ 2(10) and 2(11).

⁶ To the extent that DER suppliers provide gas services, those DER suppliers would also be "gas corporations."

customers that facilitate the safe and efficient delivery of electricity. With respect to those DER suppliers, the Commission has direct jurisdiction under Articles 1 and 2 of the PSL.

Furthermore, when a DER supplier participates in or otherwise takes advantage of a Commission-directed or authorized program, tariff, or market, as itself or through its customers, the Commission can condition participation in that program on compliance with a set of rules. Therefore, even in cases where the application of PSL §§ 2(13) and 53 may be unclear, the Commission has clear authority to exercise oversight of all DER suppliers participating in Commission-authorized and/or utility or DSP-operated programs, tariffs, or markets. The Commission continues to exercise its discretion, consistent with the discussion in the REV Framework Order, to forebear from subjecting DER suppliers to rate regulation or other requirements set forth in Article 4 of the PSL.

II. Application of HEFPA

A. Staff Proposals

The Staff Proposal stated that, pursuant to PSL §53, the Home Energy Fair Practices Act (HEFPA), Article 2 of the PSL, would apply to DER suppliers in their service of residential customers. The Staff Proposal explained that some provisions of HEFPA are not relevant to the services provided by DER suppliers, such as the provisions related to termination or suspension of electric service, since termination or suspension of DER service will not impact a customer's ability to receive electric service from their distribution utility.

The CDG Low-Income Notice included a proposed list of applicable and inapplicable provisions of the section of the New York Code of Rules and Regulations (NYCRR) that implements

HEFPA. Proposed applicable provisions included 16 NYCRR §§ 11.6, 11.11, 11.12, 11.13, 11.14, 11.15, 11.16, 11.17, 11.20, 11.21, and 11.22; these sections govern topics including budget billing, security deposits, meter reading, backbilling, late charges, and requirements on what information must be provided to residential customers.

B. Comments

Several commenters, including the JU, the City of New York, UIU, and PULP, agree that the application of HEFPA to DER suppliers is an important consumer protection. Other commenters, including some DER suppliers, argue that HEFPA should not be applied to DER suppliers because the differences between the energy commodity markets and the DER markets are too significant. Other DER suppliers agree that HEFPA applies but suggest that its application be tailored to the different characteristics of DER suppliers, as compared to distribution utilities and ESCOs. NRG states that the Staff assertion that certain terms of HEFPA apply to DER suppliers is overly broad. PULP argues that the proposal undermines HEFPA by not fully applying it to all DER suppliers.

C. Determination

As described above, HEFPA applies to "any entity that, in any manner, sells or facilitates the sale or furnishing of gas or electricity to residential customers." A DER supplier that "sells or facilitates the sale or furnishing of gas or electricity" therefore must comply with Article 2 of the PSL and with the Commission's regulations in 16 NYCRR Part 11 to the extent applicable. This definition is focused more narrowly on the sale of electricity or gas. For that reason, HEFPA does not apply to all DER suppliers subject to the UBP-DERS. Rather, it applies to CDG providers and on-site mass market DG providers, as those terms are defined in the UBP-DERS. It would also apply

to any other DER supplier directly engaged in the sale of gas or electricity.

Staff correctly notes that some provisions of HEFPA are inapplicable to DER suppliers due to the different characteristics of the service they provide. This does not undermine HEFPA, but instead recognizes that provisions governing particular actions, such as the termination of electric service, cannot be applied to companies with no ability to take those actions. On the other hand, wholly exempting DER suppliers from HEFPA compliance, as some commenters request, would be inconsistent with both the intent and plain text of the statute. Furthermore, those sections of HEFPA that do apply will generally only be relevant to DER suppliers that take particular actions as part of their business. For example, 16 NYCRR §11.13, which governs the use of estimated bills, applies only to DER suppliers that (a) bill based on a metered quantity and (b) sometimes use estimated bills rather than billing based only on actual meter data.

While Staff is correct that the requirements of 16 NYCRR §11.11, which requires that budget or levelized billing plans be offered to residential customers, would ordinarily be applicable, the Commission waives the requirements of 16 NYCRR §11.11 for DER suppliers, pursuant to waiver provisions in 16 NYCRR §11.22. As explained by commenters, products and services offered by DER suppliers vary widely in terms of billing methods and benefits provided. For some products, such as those purchased for a one-time payment or a fixed monthly payment, a separate budget or levelized billing plan is entirely unnecessary. Even for those DER products and service whose price may vary on a monthly or seasonal basis, such as power-purchase agreement (PPA) contracts for CDG or on-site mass market DG, the variation in the amount billed each month will be

coupled with an equivalent variation in the value of credits on the customer's utility bill each month. For that reason, a separate budget or levelized billing plan is not necessary to ensure that, on an overall basis, customer bills are reasonably stable.

In addition, 16 NYCRR §11.17 does not apply because, pursuant to subsection (a)(9) of that section, the notification sent by each customer's distribution utility will provide sufficient notice to that customer of their rights under HEFPA and related laws and regulations. 16 NYCRR §11.21 also does not apply because it deals with the Commission's authority to order the reconnection, continuation, or initiation of electric or gas service by a distribution utility.

With these modifications, the proposed set of relevant HEFPA provisions described in the CDG Low-Income Notice is adopted, as shown in Appendix C. An additional column has been added to the list explaining the circumstances where each provision would be applicable.

III. Need for Oversight and Applicability

A. Need for Oversight

1. Background

The Commission recognized in the REV Framework Order that "[w]here markets are created by order of the Commission, and managed by a DSP that is regulated by the Commission, the Commission has responsibility to ensure that customers and service providers can participate in those markets with confidence." This point was reiterated in the VDER Phase One Order, which recognized that Commission action on oversight would need to be coordinated with the full implementation of VDER to ensure that customers of the many CDG projects likely to

be put into service over the next several years are appropriately protected.⁷

2. Comments

Several commenters question the need for broad oversight of DER. DER suppliers argue that few reported abuses have occurred so far. AEA, EDF, PACE and the City of New York are worried that broad oversight could stifle nascent and existing markets like CDG and energy efficiency. Several parties, including AEE and NRG, recommend postponing adoption of the UBP-DERS until more is known about the DSP, or, as SEIA suggests, until a comprehensive code of conduct for the solar industry is in place. Other commenters, including UIU and PULP, agree that the need for oversight is strong, particularly considering existing issues involving ESCOs, and suggest that DER oversight rules need to be put into place as soon as possible to ensure that, as the DER market starts to accelerate, customers are protected.

3. Determination

The need for oversight is highlighted both by the Commission's experience with ESCOs and by emerging evidence of DER risks. As some commenters point out, available evidence suggests that abuses in DER markets have been relatively rare and limited so far. Commenters also acknowledge that the markets are fairly nascent at this time. Furthermore, in the most widespread and evolved DER market in New York, rooftop solar, projects have been subject to NY-Sun rules, including substantial review from the New York State Energy Research and Development Authority (NYSERDA), which may have prevented issues

⁷ Cases 15-E-0751 et al., supra, VDER Phase One Order at pp. 141-142.

from arising or supported their quick resolution.⁸ Similar rules do not exist to protect members of CDG projects or participants in many other DER markets and tariffs. As CDG and other areas of the DER market grow, more issues may emerge, especially without meaningful and comprehensive oversight. Indeed, Staff is already aware of instances of potential customer abuses in the DER market, including enrollment of customers in programs without their consent and deceptive marketing practices.

The implementation of oversight provisions now is necessary both to remedy problems that may already exist and to provide the tools needed to monitor and respond to emerging market trends. The Commission is particularly mindful of the potential for false promises and exploitative pricing in the DER marketplace, as well as the risk of customer confusion regarding the benefits and costs of new and emerging products and services. While the vast majority of DER suppliers are good actors committed to customer education, honest marketing, and offering beneficial products, even a single unethical business can cause substantial harm without proper oversight. The oversight provisions adopted in this Order expressly describe expected, ethical conduct and create the means for monitoring the market and appropriately responding to violations.

B. Overlapping Jurisdiction

1. Comments

Several commenters, including SEIA and CCSA, argue that the proposed rules overlap with rules that already exist in state or federal law or regulation or self-regulatory bodies, and some suggest that Commission oversight should be

⁸ See NY-Sun Residential and Small Commercial Program Manual and NY-Sun Commercial/Industrial Program Manual, available at <https://www.nyserda.ny.gov/All-Programs/Programs/NY-Sun/Project-Developers/Participating-Contractor-and-Builder-Resources>.

limited to areas not already covered. Some commenters suggest that further analysis needs to be completed to map these overlapping oversight roles. Other commenters like the UIU and JU suggest that existing oversight is inadequate to cover the new markets and products that the Commission and DER providers are laying the foundation for.

2. Determination

We are not persuaded that the existence of these other sources of potential consumer protection justifies forgoing or significantly limiting the Commission's role and responsibility to assure oversight and appropriate customer protections. First, where the Commission has created and facilitated markets, the Commission has the responsibility of ensuring that customers in those markets are protected. Where a customer reasonably comes to the Commission to take advantage of that protection, it is not sufficient for the Commission to refer that customer to other entities that may have limited resources or different enforcement priorities.

In addition, at least some of the cited laws, regulations, and governing bodies similarly apply to ESCOs, but experience with ESCOs has demonstrated that Commission oversight is both necessary and appropriate. Further, leaving DER regulation to these other authorities could result in confusing and inequitable situations for customers; the scope and degree of a customer's protections could vary depending on factors not transparent to the customer, including whether the DER supplier is a member of a particular industry organization, whether the DER supplier has accepted NYSERDA incentives, and the specific details of the technology used by the DER supplier. Finally, while some of the cited standards are enforced by regulatory bodies, others would require an individual customer to initiate

a court proceeding or otherwise be difficult, costly, or even impossible for an individual customer to enforce.

However, coordinating with other regulatory bodies and sources of rules can promote efficiency for the regulators and minimize barriers and potential confusion for market participants. In recognition of that, the initial scope of oversight is limited, as described below. Furthermore, Staff is required to consult with stakeholders and other regulators, including industry groups engaged in self-regulation, and develop a Report on DER Oversight Coordination by March 1, 2018 describing how Commission oversight of DER suppliers can best be coordinated with other relevant entities.

C. Applicability to DER Suppliers

1. Staff Proposals

In the REV Framework Order, the Commission explained that it would not attempt to regulate every transaction by a DER supplier, but instead focus its oversight of two types of transactions: (1) when DER suppliers acquire customer data by any means established under the Commission's authority, and (2) when DER services are sold into the DSP markets.⁹ Staff followed this framework in the Staff Proposal.

In the Supplemental Whitepaper, Staff recommended that the Commission lift this self-imposed limitation and instead exercise oversight on all DER suppliers that participate in Commission-authorized and/or utility or DSP-operated programs or markets. Staff explained that this change was appropriate both in response to the ongoing transition of utilities assuming the role of DSPs and to reduce the risk of customer confusion regarding what products and services are covered by Commission oversight.

⁹ Case 14-M-0101, supra, REV Framework Order.

2. Comments

In response to the Track One Order and the Staff Proposal, PULP argued that the limited scope proposed was inadequate and would miss many DER providers. RESA argued that sufficient jurisdiction does not exist to support the expansive coverage proposed in the Supplemental Whitepaper. NEMA notes that the foundation upon which the initial and supplemental White Paper relies, namely Public Service Law Article 2, Section 53, does not give the Commission statutory authority over entities supplying DER. AARP states in reply comments, that the Commission need not take a narrow view of its regulatory reach, and that public discussion to develop a comprehensive regulatory oversight of DER suppliers, including potential corrective legislation, should be initiated.

3. Determination

The proposal in the Supplemental Whitepaper, which will ensure that all customers participating in programs or markets that the Commission oversees receive appropriate protections, is adopted. Therefore, the rules of general applicability adopted in this Order and included in the UBP-DERS will apply to all DER suppliers that participate in Commission-authorized and/or utility or DSP-operated programs or markets, including CDG providers, developers of renewable generation compensated under net metering or Value of Distributed Energy Resources (VDER) tariffs, and DER suppliers participating in utility-operated demand response, non-wires alternatives, and REV demonstration projects, with respect to transactions between the DER supplier and a distribution utility customer in New York state. The basis for the Commission's legal authority to regulate DER suppliers is described in the Legal Authority section above.

In general, transactions with electric customers on Long Island will not be subject to the UBP-DERS because those transactions will take place within the context of programs and tariffs authorized by the Long Island Power Authority (LIPA) and its utility contractor rather than programs and tariffs authorized by the Commission and the distribution utilities it regulates. Nevertheless, LIPA is encouraged to adopt similar protections to those included in this order. Transactions related to Keyspan Long Island programs or tariffs, as well as transactions on Long Island related to NYSERDA programs authorized by the Commission, including the Clean Energy Fund and the New York Green Bank, will be subject to the UBP-DERS.

Furthermore, because the oversight adopted in this Order is focused on protecting electric and gas customers, the UBP-DERS will not apply to transactions between a DER supplier and a utility or other program administrator. Rules governing behavior in and oversight of those programs and transactions will appear within the program rules, the utility tariff, or the procurement request or contract, though the Commission may consider standardization of such rules into the UBP-DERS in the future.

D. Limited Scope of Oversight and Division of Rules into Generally Applicable and DG-Only

1. Staff Proposal

The Supplemental Whitepaper contained proposed rules to be applied broadly to DER suppliers, including CDG providers, participants in non-wires alternatives and demand response programs, energy efficiency suppliers, and providers of DER products and services that participate in net energy metering or VDER tariffs.

2. Comments

Many commenters, including DER industry representatives, consumer advocates, and the City of New York

recommend that the Commission's initial scope should be limited to those industries and customer classes that are exposed to the most risk, such as mass market customers. These commenters are concerned that too much regulation can stifle these nascent DER markets before they are able to thrive. Some commenters suggest that oversight start with residential customers first, and expand later to other customer classes as needed. Others recommend that the scope of Commission oversight should be as broad as possible, and that further calibrations can occur as needed to adapt to market changes.

Some commenters, including UIU, describe the problems that have occurred in the ESCO market and explain that meaningful oversight is needed for DER markets to avoid similar issues. Other commenters, including SEIA and AEE, argue that the ESCO market is not a good analogy to DER since ESCOs mostly compete on price alone and offer a fairly homogeneous product compared to DER suppliers, which offer more tangible and varied projects and are therefore less susceptible to deceptive marketing practices.

3. Determination

While, as described above, regulation of DER suppliers is both appropriate and necessary, the Commission is sensitive to concerns raised in comments that overly broad or burdensome regulation could hinder innovation. Furthermore, as described in the VDER Phase One Order, CDG requires the most immediate attention, as compared with more established markets, like the energy efficiency market, and with markets primarily focused on non-residential customers.

A focus on CDG is appropriate because it is an emerging market poised for quick growth. More than 100 CDG projects are expected to be put into service over the next one to two years, and most projects will have dozens or even

hundreds of members. CDG also merits special attention because, unlike many currently existing programs that involve the installation of hardware on customer property, it may be less transparent to the consumer. Moreover, many CDG programs may have a low cost of entry and low ongoing costs and may therefore be subject to less customer scrutiny and monitoring. In addition, CDG providers, like ESCOs, often market directly to mass market customers and focus their marketing on savings claims.

Particular attention to on-site mass market DG providers, including rooftop solar providers, is also appropriate. Because most residential DG projects in the past have been rooftop solar projects funded by NY-Sun, customers in this market have generally been protected by NYSERDA's oversight of NY-Sun. However, as NY-Sun funding reduces and is ultimately exhausted, mass market DG projects will increasingly be built outside of that framework. Commission oversight is necessary to supplement and, ultimately, replacement for NY-Sun rules. Staff should work with NYSERDA throughout this process to ensure a smooth transition and avoid confusion or duplication of efforts.

For the foregoing reasons, this Order applies a limited set of generally applicable provisions to all DER suppliers that participate in Commission-authorized and/or utility or DSP-operated programs or markets and adopts a more specific and detailed set of provisions for CDG providers and on-site mass market DG providers. The Commission will consider on a rolling basis whether, when, and how more detailed regulations should be applied to other DER market segments.

This Order also recognizes the distinction between mass market customers, including residential customers and small commercial customers, and large customers, including commercial and industrial customers. Large customers, defined consistent

with the VDER Phase One Order as customers that are within a jurisdictional utility's non-residential demand-based or mandatory hourly pricing (MHP) service classification, are substantially more sophisticated and often retain energy experts, attorneys, and other professionals to assist their procurement of DER products and services. For that reason, some more prescriptive rules apply only to mass market customers, defined as customers within a jurisdictional electric utility's residential or small commercial service class and not billed based on peak demand. Where a DER supplier or marketing representative does not have sufficient information to determine whether a customer is a mass market or a large customer, that customer should be treated as a mass market customer unless and until the DER supplier or its marketing representative acquires sufficient information and determines that the customer is a large customer.

IV. Uniform Business Practices - Distributed Energy Resources Providers

The rules applicable to DER suppliers are contained in the UBP-DERS, attached to this Order as Appendix A. The UBP-DERS contains provisions applicable to all DER suppliers as well as provisions applicable only to CDG providers and on-site mass market DG providers. It is divided into three sections: Section 1, which contains definitions for the terms used throughout the document; Section 2, which contains requirements applicable to all DER suppliers; and Section 3, which contains requirements applicable only to CDG and on-site mass market DG providers. The UBP-DERS will be published on the Department's website and will be updated whenever the Commission makes changes to the rules applicable to DER suppliers.

A. Consolidated UBP

1. Staff Proposal

The Supplemental Whitepaper explains that while a separate UBP-DERS is proposed at this time, the UBPs for ESCOs and for DER suppliers should be consolidated as soon as practicable.

2. Comments

Some commenters, including JU, the City of New York, AARP and AEA, argue that the proposed UBP-DERS be merged with the UBP applicable to ESCOs, and a single document be created to avoid confusion. Other commenters note the distinction between the ESCO market and DER market and argue that, as less oversight is needed for the nascent DER markets, a separate document is appropriate. Direct Energy, Exelon, NEMA, and RESA are concerned that the proposed practices would competitively disadvantage ESCOs because they would apply a higher regulatory burden to ESCOs selling DER than to entities selling DER that do not supply energy commodity.

3. Determination

At this time, given the different states of the ESCO and DER markets, separate documents are appropriate. In particular, the complexity of the ongoing ESCO proceeding makes modifications to the UBP impractical. The Commission agrees with the commenters that a single document should ultimately be created to avoid confusion or unnecessary duplication. Staff should issue a plan for combining that the documents as soon as it becomes practicable.

Where a company engages in both the sale of electric or gas commodity as an ESCO and the sale of DER products or services as a DER supplier, that company must follow both sets of rules, as applicable to any particular activity. This does not create an excessively high burden on these companies;

rather, it ensures that they will follow the appropriate rules for the activities they engage in. Because many of the provisions of the UBP-DERS are based on provisions in the UBP, modified as needed for the different characteristics of the markets they cover, this will not result in companies being subject to inconsistent or contradictory requirements.

V. Generally Applicable Provisions

As described above, these provisions apply to all DER suppliers that participate in Commission-authorized and/or utility or DSP-operated programs or markets with respect to transactions between the DER supplier and the customer of a distribution utility in New York state, excluding LIPA and its utility contractor. These provisions are generally "passive" provisions, in that they forbid certain behaviors, such as fraud, rather than mandating particular actions. The exceptions are (a) the customer consent requirement, which requires that DER suppliers preserve a record of customer consent and complaints for large or ongoing transactions; (b) the customer data rules, which require particular actions but apply only to DER suppliers that intend to obtain data through the Electronic Data Interchange system (EDI); and (c) the reporting and disclosure rules, which require only that DER suppliers respond appropriately to Staff requests and do not impose an affirmative reporting obligation. These requirements, which are targeted at ensuring that accurate information is provided to customers and that no customers are enrolled without informed consent, will require minimal or no changes to existing DER supplier business practices.

A. Customer Consent

1. Staff Proposal

The proposed UBP-DERS included requirements that DER suppliers ensure that explicit customer consent has been received before initiating service or billing to a customer and retain a record of that consent. The DER supplier would be required to receive explicit customer consent, either in writing, electronically, or through recorded verbal statement, and retain record of consent for longer of length of agreement or two years.

2. Comments

UIU argues that the UBP-DERS should require informed, affirmative consent for contract renewals. No other comments were received on this issue.

3. Determination

An individual's participation in a DER program must be premised on that individual's explicit and informed consent. Con Edison has identified instances where a demand response aggregator enrolled customers in demand response programs, with payments directed to that aggregator, without their consent. This outcome is unacceptable and must be addressed.

All DER suppliers must obtain a customer's consent to a sales agreement, which may be a written contract signed by the customer or a customer's verbal or electronic authorization to enter into an agreement with the DER supplier for the products and services specified, prior to enrolling a customer in a DSP, utility, NYSERDA, Commission, or Department-run or authorized program or billing a customer. This requirement is not intended to create an additional step for DER suppliers; the Commission expects that DER suppliers already obtain consent before providing service or billing a customer, whether through that customer signing a contract, swiping his or her credit card,

clicking a purchase button online, or verbally agreeing to a service.

In order to facilitate Commission and Department oversight, for large or ongoing transactions DER suppliers shall retain that evidence of consent, which may be a signed sales agreement or similar document or may be a record of the customer's electronic or verbal agreement, for at least two years or the length of the agreement, whichever is longer. An ongoing transaction is any transaction which, regardless of the size of the transaction, either (a) results in the DER supplier billing the customer for a period of three or more months or (b) results in the DER supplier enrolling the customer in a program through which the customer or the DER supplier will receive compensation, including bill credits, for a period of three or more months. A large transaction is any transaction in which a customer makes a payment to a DER supplier of \$500 or more. DER suppliers should also keep summary records of complaints by customers with whom they engaged in large or ongoing transactions.

B. General Marketing Standards

1. Staff Proposal

The proposed UBP-DERS included marketing standards for DER suppliers advertising to or soliciting customers, which were based on the marketing standards applied to ESCOs through the UBP. These included: (1) not engaging in misleading or deceptive conduct or making false or misleading representations; (2) providing written information about the product or service offered or a website address where such information about the product or service can be obtained upon request; (3) providing information that is in plain language designed to be understood by the customer in the language in which marketing is being conducted; (4) complying with relevant local, state, and federal

laws regarding door-to-door and telephone marketing; (5) responding to customer inquiries and complaints; (6) cooperating with the Department, Commission, and other regulatory entities, including law enforcement, as needed.

The proposed UBP-DERS also included a number of more specific marketing requirements, which are further discussed below in the "Specific Marketing and Advertising Standards" section.

2. Comments

Some commenters, including NEMA and RESA, agree that DER suppliers should be required to comply with marketing rules like those applied to ESCOs through the UBP. Other commenters, including SEIA, argue that the ESCO and DER markets should not be treated similarly and that, given the absence of evidence of problems in DER markets, no or minimal marketing requirements should be imposed on DER suppliers. Mission:data expresses concerns that the proposed marketing standards are unduly burdensome for software companies and other organizations who are offering an energy information service, a capacity service, or anything that is not commodity supply.

3. Determination

At least a minimum set of requirements should be applied to all DER suppliers to ensure that customers are not subject to fraud, abuse, or other deceptive marketing. The General Marketing Standards, as detailed in the UBP-DERS, represent this minimum set of requirements. Requirements to avoid fraudulent, misleading, or confusing behavior, comply with applicable local, state, and federal laws, obtain clear customer consent, and communicate appropriately with customers will not impose a burden or require modification of business practices for any DER supplier. So long as a DER supplier is conducting

its business in an ethical manner, it will be complying with these requirements even if it is unaware of their existence.

C. Customer Data

1. Staff Proposal

The UBP establishes practices for the release of customer information by utilities to ESCOs, identifies the content of information sets to be provided by utilities to authorized ESCOs upon authorization of the consumer, and requires ESCOs to safeguard that information. The proposed rules would apply similar requirements to DER suppliers.

2. Comments

Atlantic is concerned that the proposed UBP-DERS appears to suggest that the EDI system currently used in the retail access program will be sufficient for the DER marketplace and argues that it will not be. AEE argues that the overly-burdensome cyber security framework adopted by the UBP-DERS will act as a barrier to entry for smaller DER providers. AEE contends that all requirements regarding consumer protections should be written into contracts between DER providers and the DSP based on standards set by the Commission, and that these requirements should not duplicate or conflict with existing state and federal laws. AEMA requests notice of the standards, systems and protocols being developed regarding the data needed to support DER products. BlueRock does not believe that customer usage data is sensitive enough to require that DER suppliers retain verifiable proof of such authorization. RESA argues that the proposed rules regarding access to customer information are inadequate for developing a DSP market. SolarCity asserts that these protections can be addressed through appropriate contract terms in contracts between the DSP and DER suppliers. SEIA asserts that the Commission should adopt its proposed Code of Conduct instead of the proposed UBP-DERS.

3. Determination

The Commission adopts the proposed rules in order to enable DER suppliers to receive data through EDI, with customer consent, on a similar basis as ESCOs. Utilities, EDI providers, and DER suppliers should begin working together to determine what modifications or additions should be made to EDI for this purpose.

The Commission agrees that EDI on its own may not be sufficient to meet the data needs of DER suppliers as the market develops. Additional methods of sharing data are already being implemented through technologies such as AMI and in other venues, including through Green Button Connect¹⁰ and NYSERDA's Utility Energy Registry.¹¹ Requirements and policies associated with receiving data through these systems will be developed in those venues.

D. Responsibility for Contractors and Other Third-Party Agents

1. Staff Proposal

The proposed UBP-DERS stated that DER suppliers would be responsible for the activities of contractors and vendors conducting marketing activities on behalf of DER suppliers.

2. Comments

No comments were received on this topic.

¹⁰ Case 13-E-0030 et al., Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Electric Service, Order Approving Advanced Metering Infrastructure Business Plan Subject to Conditions (issued March 17, 2016); Case 14-M-0101, supra, Order Adopting Distributed System Implementation Plan (DSIP) Guidance (issued April 20, 2016); Case 14-M-0101, supra, Order Adopting a Ratemaking and Utility Revenue Model Policy Framework (issued May 19, 2016).

¹¹ Case 17-M-0315, In the Matter of the Utility Energy Registry, Notice Initiating Matter and Seeking Comment on Utility Energy Registry (issued June 12, 2017).

3. Determination

Where any DER supplier enlists a third party to assist them in marketing, data collection or analysis, billing, or any other activity, that DER supplier is responsible for making commercially reasonable efforts to ensure that the third party's activities conform with the relevant regulations and requirements. This includes, but is not limited to, cases where a DER supplier purchases a list of potential customers or similar information from a third party which assembled that list through its own advertising. In such cases, the DER supplier purchasing the list is responsible for making reasonable efforts to ensure that the list was not assembled through deceptive marketing tactics.

E. Customer Inquiries and Complaints

1. Staff Proposal

The proposed UBP-DERS includes requirements for responses by a DER supplier to customer inquiries and complaints, including that the supplier acknowledge the inquiry or complaint within two days and respond to it within fourteen days, that the DER provider offer a local or toll-free contact number staffed at least eight hours per day on weekdays, and that the UBP-DERS track inquiries and complaints.

2. Comments

SolarCity asserts that the Staff Proposal regarding consumer inquiries is duplicative with federal law, including the Unfair Deceptive Practices Act and Unfair Deceptive Abusive Practices Act. Mission:data argues that Section 6 should be struck since the wide variety of DER suppliers, includes non-profit organizations, academic institutions, smartphone app developers, and others. Mission:data explains that these entities may not generally have 800 numbers, or even telephone

support at all and argues that it is unreasonable to require them to provide customer assistance in the ways specified.

3. Determination

The Commission agrees that some of these requirements, including the requirement for a toll-free number, are not necessary for all DER suppliers and could be burdensome for small or new companies. Specific requirements related to customer inquiries or complaints will therefore not be placed on all DER suppliers at this time; as described below, specific requirements in this area are applied to CDG and on-site mass market providers. However, Staff will accept inquiries and complaints related to DER suppliers and will make efforts to investigate and resolve those complaints. Where necessary, Staff will bring those complaints to the Commission for consideration of appropriate consequences, as described in the following section.

F. Consequences for Violations

1. Staff Proposal

Staff's original Proposal identified the conditions under which consequences for non-compliance may be imposed, as well as the procedures to be used to ensure due process. Staff also proposed that, where the alleged violations were not repeated or egregious, DER suppliers should be offered the opportunity to cure the violation and not be subjected to any further consequences if they did so.

Staff modified the Proposal in the Supplemental Whitepaper to match the process currently in place for ESCOs. Staff proposes that upon evidence of a single violation of the UBP-DERS, the Commission may proceed directly with an Order to Show Cause for revocation of a DER suppliers' eligibility to sell products in DSP markets and permission to acquire customer

data through means established by the Commission, or any less severe action it determines appropriate.

2. Comments

Several commenters, including AE, AEE, BlueRock, CPA, Direct Energy, and ETS, argue that Staff's elimination of a "cure" period is too harsh. PULP asserts that the proposed enforcement procedures are too lenient and recommends a range of consequences for non-compliance including customer restitution and revocation of authority to operate. PULP also opposes allowing a cure period within which to rectify a violation. ETS recommends that a security breach alone not be considered an egregious act. They further argue that the rationale for eliminating the cure period - because a similar policy change was made in the ESCO industry - is not valid since the ESCO industry is very different from the DER industry. Other commenters state that DER should be treated similarly to ESCOs and that customers need these protections so that the problems in ESCO market do not reoccur in the DER market. UIU noted that the proposed enforcement procedures are too lenient and recommends a range of consequences for non-compliance including customer restitution and revocation of authority to operate.

3. Determination

Where a DER supplier is alleged to have breached one or more of the standards described in the attached UBP-DERS, the Commission and Staff must be able to investigate and take action as appropriate. In some cases, a reminder and a cure period will be a sufficient response to a minor breach. However, a cure period should not be mandatory in order to ensure that significant breaches can be dealt with swiftly and appropriately. For that reason, the Commission adopts Staff's recommendation that the process currently in place for ESCOs be followed: when Staff identifies, through a complaint or

otherwise, a potential violation of these rules, depending on the severity of the violation, they may contact the DER supplier informally to discuss resolution, contact the DER supplier formally through a Notice of Apparent Violation, which requires a response, or propose that the Commission issue an Order to Show Cause.

In any case, the DER supplier will have the opportunity to respond before any action is taken, and consequences can only be imposed after a finding by the Commission. Consequences could range from a warning or requirement to provide notice of an issue to customers, at the light end, to a complete ban from future participation in Commission-authorized and/or utility or DSP-operated programs or markets, at the severe end. To the extent that individual customers were harmed, the Commission will consider conditioning continued participation in Commission-authorized and/or utility or DSP-operated programs or markets on the DER supplier offering a refund or corrective pricing to those customers.

G. General Reporting Requirements

1. Staff Proposal

The Staff Proposal would require DSPs and DER suppliers to provide information to Staff and the Commission upon request. DER suppliers would be required to provide annual information regarding the number of customers of various DER product categories. They would also be required to provide information on consumer complaints concerning products and services sold to the DSP, as requested by Staff, as well as other information it requests. DSPs would be required to provide information to assist Staff in monitoring DER markets.

2. Comments

AEMA, ETS, and Direct would clarify that Staff requests for information must be related to its role in

monitoring development, conduct, and performance of energy markets. AEE and BlueRock state that the proposed language regarding reporting requirements is overly broad. CCSA argues that for CDG, this reporting requirement is redundant as both the number of projects and MWs of CDG installed are already tracked and reported as part of the VDER Phase One implementation. Direct Energy states that it is unclear why ESCOs are singled out and listed separately since they are already subject to ESCO-specific reporting requirements per the UBP. Direct opposes the broad language allowing staff to obtain other information and requests that the Commission be more specific regarding the type of information to be requested. ETS contends that reporting requirements should be narrowed to be applicable only to ESCOs selling DER or DER combined with commodity to mass market customers of through the Digital Marketplace. NEMA argues that Staff information requests to DER suppliers must be reasonable and germane to the entities DER-related business in New York State.

3. Determination

The ability to access relevant information on DER markets and on individual DER suppliers and transactions is necessary to monitor the conduct and performance of energy markets and ensure market development, as well as to address particular complaints and concerns. Staff plays an important role in monitoring these markets, investigating complaints, and bringing relevant issues to the Commission for determination. For that reason, it is appropriate to require that all DER suppliers provide information to Staff or the Commission on request, including but not limited to information on customer complaints and particular transactions and information related to the DER supplier's business operations and financials. Staff may conduct audits or other reviews of DER suppliers, and must

have access to the books, accounts, contracts, records, and documents of the DER supplier as necessary.

VI. Oversight of Community Distributed Generation Providers and On-Site Mass Market DG Providers

Several of the provisions of the UBP were applied to CDG providers by the CDG Order pending the resolution of this proceeding.¹² In particular, the CDG Order required CDG providers to comply with the three-day rescission period for residential customers, the requirement that sales agreements be clear and comprehensive, rules governing unauthorized release of customer information, and rules protecting against false, deceptive, or misleading marketing conduct. No commenter presented arguments that the application of those rules has harmed the CDG market. Many of the rules established in this Order are nothing more than those rules as more closely tailored to DER markets.

For the purpose of these regulations, a CDG provider is defined as an entity that is acting as a CDG Sponsor for one or more CDG projects or that is otherwise engaged in soliciting customers, members, or subscribers for a CDG project or CDG projects, through its own employees or contractors, on its own behalf rather than as a contractor. A contractor or other third party that provides services to CDG providers but does not meet that definition will not be considered a CDG provider or required to register with the Department. However, as described in the section above regarding contractors and other third-party agent, a registered CDG provider is responsible for the actions

¹² Case 15-E-0082, Proceeding on Motion of the Commission as to the Policies, Requirements and Conditions for Implementing a Community Net Metering Program, Order Establishing a Community Distributed Generation Program and Making Other Findings (issued July 16, 2015) (CDG Order), p. 11-12.

of contractors or other third-party agents acting on its behalf or under its direction. In addition, a registered CDG provider purchasing a customer list or similar information or services from a third-party marketer is responsible for ensuring that the list was not assembled in a manner inconsistent with these regulations, such as through deceptive marketing.

An on-site mass market DG provider is defined as an entity that is engaged in soliciting mass market customers for a project or service that involves the installation of distributed generation equipment, such as solar panels, on the property of those mass market customers, through its own employees or contractors, on its own behalf rather than as a contractor.

A. Registration

1. Staff Proposal

The Staff Proposal recommended that entities seeking to participate in DSP, and similar markets as defined above, be required to submit an application and obtain a finding of eligibility. This application would include information such as company name and contact information, a list of criminal or regulatory sanctions imposed in the last two years against the entity, its affiliates, or its employees in New York and throughout the US, a list of current investigations being conducted by law enforcement or regulatory agencies in New York and throughout the US, information regarding security breaches associated with customer-specific information in New York and throughout the US, as well as a list of products and services to be offered and sample sales agreements.

The Supplemental Whitepaper modified the requirement for disclosure of criminal or regulatory sanctions to limit it to officers, directors, and those employees interacting directly with customers. Applicants would need only provide information regarding criminal or regulatory sanctions imposed in the last

24 months against the DER supplier, any officers or directors of the DER supplier, any entities holding ownership interests of 10% or more in the DER supplier, or any employees interacting directly with customers. Additionally, with respect to the requirement that a DER supplier update changes to the personnel identified to Staff as responsible for resolving consumer complaints, Staff clarified that this identification requirement is intended to be applicable to whomever the DER supplier identifies in its application as the point of contact for such complaints, irrespective of whether that individual is a supervisor.

2. Comments

Most commenters do not oppose simple application requirements, while several recommend specific changes to the proposed application. AEE asserts that application requirements should be brief, straightforward, and uniform for all companies so they are not a barrier to entry. In contrast, BlueRock asserts that requiring entities to disclose information as a condition of operating in New York will discourage innovation. Several DER suppliers recommend that the application not require a list of DER products and services to be offered, asserting, for example, that requiring DER suppliers to identify the products they will sell is unworkable and inconsistent with a dynamic market. Several DER suppliers oppose the requirement that DER suppliers submit sample sales agreements as part of their application, saying that such a requirement is contrary to the nature of DER sales involving customized solutions. NRG and AEMA also note that sales agreements may contain trade secret or commercially sensitive information. AEMA questions the need for the proposed requirement that DER suppliers provide revisions and updates to the terms of business relationships between the DER suppliers and its customers, stating that such a requirement

is onerous. Direct Energy recommends that the requirement to identify criminal or regulatory sanctions in the application be limited to officers and directors instead of applicable to any employee or, that at a minimum, it be limited to felonies or other criminal sanctions related to the scope of the employee's role with the company. The City of New York suggested that the draft rules be modified to clarify that updates in changes to the personnel identified to Staff as responsible for resolving consumer complaints is applicable only to personnel at the supervisory level, and to changes in those personnel.

3. Determination

Registration of CDG and on-site mass market DG providers will ensure that the Commission and Staff have the necessary information to accept, evaluate, and resolve complaints. Furthermore, the registration requirement ensures that CDG and on-site mass market DG providers are on notice of the existence and terms of the UBP-DERS. By applying the requirement only to CDG and on-site mass market DG providers at this time, the Commission avoids imposing unnecessary requirements on innovative start-ups and companies that do limited business in New York State. This also provides Staff and DER suppliers with an opportunity to become familiar with and refine the registration process before it is further expanded.

CDG and on-site mass market DG providers shall include a sample contract or contracts for their generally available products or services with their registration filing. The sample contracts may contain placeholders or otherwise indicate that certain terms may vary from customer to customer. Sample contracts are required only for materially distinct categories

of products¹³ and CDG and on-site mass market DG providers are not required to file new or updated sample contracts based on the modification of individual terms for particular customers, nor are CDG and on-site mass market DG providers required to file sample contracts reflecting individually negotiated agreements with non-residential customers. CDG and on-site mass market DG providers are required to file new or updated sample contracts if material changes are made to their standard terms or format that will generally be used for new customers or if they add new product or service options. Similarly, CDG and on-site mass market DG providers will be required to file sample bills for each materially distinct category of products and update those sample bills when material changes are made to their standard terms or format.

At this time, the Commission only requires that the application disclose criminal or regulatory sanctions, if any, against the DER supplier, any senior officers of the DER supplier, or any entities holding ownership interests of 10% or more in the DER supplier, and not for other employees. This is consistent with the current practice for ESCOs. Any change to that practice should be considered comprehensively and must include consideration of methods for avoiding the disclosure of irrelevant criminal information.

Staff shall develop and issue a registration form that complies with the requirements set forth in the UBP-DERS by October 30, 2017. That registration form shall be filed in Case 15-M-0180 and shall be posted on the Department's website with the UBP-DERS, as well as included in the UBP-DERS as an attachment. All active CDG and on-site mass market DG providers

¹³ For example, a CDG provider that offers both a power purchase agreement model and a lease model should file a sample contract for each.

shall file a completed registration form, including a sample contract or contracts and sample bill or bills, by December 1, 2017.

To ensure that all CDG and on-site mass market DG providers are aware of this requirement, notice of this Order will be provided in the Community Distributed Generation and Value of Distributed Energy Resources cases. Furthermore, Staff shall work with the electric utilities and NYSERDA to provide notice to companies that have submitted or submit applications for interconnection or NY-Sun funding. Once the deadline for registration passes, Staff shall work with the electric utilities and NYSERDA to determine whether any CDG and on-site mass market DG provider has failed to register. Starting on December 1, 2017, electric utilities shall require that proof of registration be submitted as part of an initial interconnection application. Staff should attempt to contact any such CDG or on-site mass market DG provider and offer them the opportunity to register before bringing the issue to the Commission's attention through an enforcement action.

This Order will not impose an approval requirement on CDG and on-site mass market DG providers that are already in operation. Instead, Staff will review each registration and will contact the CDG or on-site mass market DG provider if any deficiencies or issues of concern are identified. If the CDG or on-site mass market DG provider fails to remedy those deficiencies or issues of concern, Staff should bring the matter to the Commission for consideration. This modification is made to Staff's proposal to ensure that the registration requirement does not interrupt a CDG provider's business activities and to clarify that Staff's role is to ensure that a CDG or on-site mass market DG provider has properly complied with the formal

application requirements, rather than to make a discretionary or subjective determination of a company's fitness.

For new CDG and on-site mass market DG providers that begin operations in the State of New York on or after December 1, 2017, the Department shall review each registration package submitted within 30 days of submittal and notify the registrant, in writing, either that the registration is accepted as complete or that deficiencies exist in the registration package. The CDG Provider must modify the registration package in response to such a notification within 30 days. New CDG and onsite mass market providers shall not market directly to customers until their registration has been approved.

B. Enhanced Marketing and Advertising Standards

1. Staff Proposal

The proposed UBP-DERS included detailed advertising and marketing standards similar to the standards applied to ESCOs pursuant to the UBP. This includes standards for the training and behavior of door-to-door salesmen and telemarketers. Staff also proposed that if marketing materials and/or sales agreements for DER products and/or services contain an estimate of future utility supply charges, the estimates of future utility supply charges must be calculated based on actual utility supply charges over at least the past twelve months, as well as those actual utility supply charges plus and minus five percent. Actual utility data for the past twelve months must be used, and may be augmented with actual data for a longer period of time at the DER suppliers' discretion.

2. Comments

Some commenters argue that the proposed marketing standards are overly prescriptive. SEIA states that its Code of Conduct, which establishes the full scope of marketing interaction between companies and solar consumers and encourages

solar providers to treat consumers ethically, honestly, respectfully and with high transparency, provides sufficient protection. Other commenters like UIU and the Joint Utilities argue that strict standards are needed to ensure that customers are not misled regarding potential benefits or savings. ETS states that these rules should not apply to commercial customers or sales not conducted through the Digital Marketplace. The proposed marketing standards are unduly burdensome for software companies and other organizations who are offering an energy information service, a capacity service, or anything that is not commodity supply, according to Mission:data.

Direct Energy, AEE, ETS, BlueRock and NEMA objected to requiring DER suppliers to use energy price forecasts on utility websites on the grounds that utilities are not required to post energy price forecasts, that utility forecasts will not provide consumers with meaningful data for evaluating offers; and, that forward or futures market prices should be used instead. Some parties identify specific sources of electricity price forecasts, including forecasts from industry experts, that the Commission should rely upon. JU suggest that Staff's concern could best be addressed by a requirement similar to that in legislation recently approved in Arizona. There, entities predicting future utility charges must supply a range of estimates that reference utility prices as a benchmark. Direct Energy states that the term "multi-year average" could be easily manipulated by not using recent or consecutive years. In addition, since there is no requirement that the utilities publicly post historical or recently forecast energy prices, it's impossible for DER suppliers to use information provided by the utilities to comply with this requirement.

3. Determination

Many of the marketing and advertising standards Staff proposes are both common-sense and appropriate to ensure that deceptive or unreasonably high-pressure marketing do not occur and they are therefore adopted.

Staff's proposal regarding savings estimates is modified to permit CDG and on-site mass market DG providers to use a price forecast of their choice in estimating savings but to require any provider that does so to also provide a forecast using a standard baseline. The standard baseline is a three-year average of actual historical utility rates for the three most recent calendar years for which data is available, for the customer's actual utility and service class. The provider may choose to apply an assumed escalation rate of up to 3% per year to this baseline in generating a forecast; if the provider does so, it must disclose the escalation rate used. The forecast generated must estimate savings for the same potential contract term as any other forecast provided. This forecast must be presented with similar prominence to other forecasts and all forecasts must be appropriately labeled to permit customers to understand their source. This requirement only applies to mass market customers, as large customers are likely to be more familiar with methods of forecasting and estimating prices and savings.

C. Required Contract Terms

1. Staff Proposal

While the Staff Proposal recommended the development and use of standard contracts, the Supplemental Whitepaper recognized that this could be impractical given the variety of products in the DER market, and furthermore could stifle innovation. Staff's original proposal would require DER suppliers to use specific contracts or contract terms, including

a Customer Disclosure Statement, to the extent developed. Comments were invited on an approach under which specific contract terms, as well as potential differences among industries, would be explored in a subsequent phase of this proceeding. Comments were also invited on alternative approaches which achieve the goals articulated above. The Supplemental Whitepaper sought to avoid interfering with the development of innovative energy products and services by replacing the requirement for standard contracts with a requirement for a standard disclosure statement.

2. Comments

AEEI, AEA, BlueRock, CPA, CCSA, Direct Energy, EDF, NRG, RESA, SolarCity and SEIA states that given the rapid pace of change in the DER industry, standard contracts or contract language approved by regulators would be an impediment to the development of the market. EIA and others comment on the benefits to consumers and market development from standard contracts for similar products, as well as standard contract terms including disclosure statements.

3. Determination

While it would be unnecessary and potentially harmful to require all CDG and on-site mass market DG providers to use a standard contract at this time, imposing certain minimum standards on contracts with mass market customers will increase customer protections without hindering innovation. Therefore, the UBP-DERS includes requirements that contracts be written in plain language and be provided in the same language that the CDG provider has used to market to the customer; that residential customers be given the right to cancel the contract within three business days after its receipt without charge or penalty; and that the contract include essential terms including, but not necessarily limited to, pricing, cancellation rules, information

on tax incentives, and details of the product or service provided.

Contracts for on-site mass market DG must also include a description of the distributed generation system, including the make and model of major system components, an outline of system specifications, and other provisions clearly describing the transaction. Consistent with NY-Sun requirements, these contracts shall include, at a minimum:

- For purchased systems, the total system purchase price, and itemized costs of system components, and any other taxes, fees or overheads that are the responsibility of the customer; or
- For leases or purchased power agreements (PPAs), the total number of payments, amount of payments, payment frequency, and due date;
- An estimate of annual energy output, including loss analysis (the percentage of the available solar resource that the solar electric system will receive, accounting for losses from shading, array azimuth, and tilt);
- The rate at which the customer will be compensated for any electricity sold to the utility, including (for a PPA) the assumed escalation rate;
- The installation location;
- Installation schedule;
- The value of all federal, state, and local tax credits, electric utility rate credits, Renewable Energy Credits, incentives, or rebates that the customer may receive and/or be required to sign over to the DER provider;
- Disclosure of any restrictions on the customer's ability to sell the system and/or his/her property;
- System and/or production warranties;

- Disclosure of any binding arbitration clauses or other terms that limit the customer's right to enforce the contract or seek damages from the courts; and
- Assignment of responsibilities, e.g., for maintenance and repairs, insurance coverage, etc., including whether such maintenance or repairs may be sold or transferred to a third party.

Additionally, all contracts shall inform residential customers of their rights under HEFPA and the UBP-DERS and provide all customers with information regarding contacting the Department for dispute resolution.

D. Standard Customer Disclosure Statements

1. Staff Proposal

Staff proposed that the disclosure statements to be developed for products and services subject to the Commission's oversight should include an explanation that the product or service is subject to the Commission's oversight. These statements should also include information regarding customers' HEFPA rights and protections, as well as information regarding dispute resolution and contacting the Department's call center for assistance.

2. Comments

Several commenters, including NEMA, explain that customer disclosure statements could be designed for different types of DER products, for the benefit of consumers shopping for those products, just as a Customer Disclosure Statement has been a valuable tool to enhance consumer understanding of ESCO retail energy products.

3. Determination

In contrast to a standard contract, a standard customer disclosure statement does not limit the ability of CDG and on-site mass market DG providers to develop and implement

innovative business models and contract terms. Rather, it ensures that all customers are adequately informed of both the terms of their agreement with the CDG provider and with their rights as customers. The information that must be included in Standard Customer Disclosure Statements for CDG providers and on-site mass market DG providers is provided in the UBP-DERS as Attachment 1. Staff shall develop Standard Customer Disclosure Statements that contain, at a minimum, that information and issue them by October 30, 2017. Those Statements shall be filed in Case 15-M-0180 and shall be posted on the Department's website with the UBP-DERS and shall replace Attachment 1 of the UBP-DERS. A CDG or on-site mass market DG provider must give a completed customer disclosure statement to each mass market customer as part of entering into a sales agreement with that customer. In the event that the text in the completed customer disclosure statement given to a customer differs from or is in conflict with a term stated elsewhere in the agreement between the DER supplier and that customer, the term described by the text in the customer disclosure statement shall constitute the agreement with the customer notwithstanding the conflicting term expressed elsewhere. Other DER suppliers are encouraged to use the Customer Disclosure Statements to develop standard disclosure forms for their own projects.

E. Customer Inquiries and Complaints Rules for CDG and On-Site Mass Market DG Providers

1. Determination

Staff's proposal and the comments filed on these issues are described in the Customer Inquiries and Complaints section, Section V.E above. The Commission will require that CDG providers and on-site mass market DG providers offer telephone support through a toll-free or local number and that they respond to customer inquiries and complaints in a consistent with the timeframe provided in Staff's proposals,

with an initial acknowledgement required within two days and a complete response within fourteen. This category of DER suppliers involves more developed and well-capitalized companies involved in projects which are expected to have substantial numbers of customers, many of whom are mass market customers. Furthermore, these companies will be building at or near their customers' property and therefore will often have a local office and associated local phone number already. For those reasons, requiring a toll-free or local number be made available for customer inquiries and complaints is appropriate and reasonable. As described above, the registration process will also facilitate Staff resolution of customer inquiries and complaints directed to the Department.

F. Reporting Requirements for CDG and On-Site Mass Market DG Providers

1. Determination

Staff's proposal and the comments filed on these issues are described in the Reporting Requirements section, Section V.G above. In addition to the generally applicable requirements, CDG and on-site mass market DG providers are required to file annual reports, by March 31 of each year, providing data for the previous year, including aggregate number of customers served, a summary of services provided, and information on the number and classification of complaints received. As further described in the VDER Implementation Order, CDG providers are also required to provide an annual report to each customer and to file an annual report on banked credits.¹⁴ These requirements are included in the UBP-DERS for completeness.

¹⁴ Case 15-E-0751, supra, Order on Phase One Value of Distributed Energy Resources Implementation Proposals, Cost Mitigation Issues, and Related Matters (issued September 14, 2017) (VDER Implementation Order), p. 34-35.

VII. Business-to-Business Issues

The Staff Proposals and draft UBP-DERS contained a several sections targeted to the relationship between a DER supplier and a utility or DSP. Many of these requirements were related to DER supplier performance in utility programs requiring performance, such as demand response and non-wires alternative programs, which is already governed by Commission-approved program rules and contracts for those programs. For that reason, those regulations will not be adopted at this time. The existing program rules and contracts will remain the governing documents. As part of future consideration of expansion and revision of the UBP-DERS, the Commission will evaluate whether provisions related to these issues should be included.

VIII. Priority Items for Consideration

Several issues that were not included in either of Staff's proposals must be addressed to ensure that customers are sufficiently protected. These include a limit on or other standards applicable to early termination fees for all DER suppliers, the requirement of production guarantees as part of some or all CDG and on-site mass market DG contracts, and a limit on annual escalation provisions in CDG and on-site mass market DG contracts. In order to facilitate expedited Commission consideration of these issues, Appendix D to this Order contains questions for comment on these topics. Responses to those questions must be filed by January 8, 2018 to guarantee

consideration as part of the Commission's deliberations.¹⁵ This will permit a Commission decision in early 2018.

CONCLUSION

With this Order, the Commission implements a robust set of protections for New Yorkers participating in the evolving DER programs and markets, while ensuring that small and innovative businesses will not be overburdened. DER oversight will continue to evolve, both through the addition of requirements in response to market changes and through the removal of unnecessary provisions. This Order gives the Commission and Staff the tools necessary to monitor the important and growing DER markets and to prevent and discipline unethical behavior.

The Commission orders:

1. Appendix A to this Order, the Uniform Business Practices for Distributed Energy Resource Suppliers (UBP-DERS), is adopted with an effective date of December 1, 2017.

2. Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., KeySpan Gas East Corporation, The Brooklyn Union Gas Company, National Fuel Gas Distribution Corporation, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation are directed to file tariff leaves adding the UBP-DERS to their gas and electric tariffs as an addendum on not less than fifteen days' notice to become effective on December 1, 2017.

¹⁵ Notices of this consideration and request for comments will be published in the State Register consistent with the State Administrative Procedure Act and in this case.

3. Department of Public Service Staff shall file a registration form for CDG and on-site mass market DG providers, as described in the body of this Order, by October 30, 2017. Once available, it shall be included in the UBP-DERS as Attachment 2.

4. Department of Public Service Staff shall file Standard Customer Disclosure Statements for CDG and on-site mass market DG providers, as described in the body of this Order, by October 30, 2017. Once available, they shall be included in the UBP-DERS as Attachment 1.

5. Interested stakeholders shall file responses to the questions in Appendix D for Commission consideration by January 8, 2018.

6. The requirements of §66(12)(b) of the Public Service Law and 16 NYCRR §720-8.1 concerning newspaper publication of the tariff amendments described in Ordering Clause No. 2 are waived.

7. In the Secretary's sole discretion, the deadlines set forth in this order may be extended. Any request for an extension must be in writing, must include a justification for the extension, and must be filed at least one day prior to the affected deadline.

8. This proceeding is continued.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS
Secretary

**ATTACHMENT ONE: INFORMATION TO BE INCLUDED IN CUSTOMER
DISCLOSURE STATEMENTS**

CDG Customer Disclosure Statement

Prepared for: [Customer Name]

Prepared by: [Provider Representative Name and Title]

[Provider Name]

[Provider Address]

[Provider Telephone Number]

Costs of Subscription	<ul style="list-style-type: none"> • Amount and due date of non-recurring charges • Amount and due date of recurring charges • If charges will increase or vary, by how much, based on what, and what notice will be given
Estimated Benefits	<ul style="list-style-type: none"> • Estimate of kWh generation of percentage of system allocated to customer • Estimate of dollar value of credits generated by percentage of system allocated to customer • Estimate of net savings based on utility baseline, detailed in UBP-DERS
Terms and Conditions of Subscription	<ul style="list-style-type: none"> • Identify financial structure (e.g. PPA, lease or ownership) • Identify location of panels and size of system • Identify applicable tax credits and whether customer or provider has rights to those credits • Identify whether credits will be valued based on Net Energy Metering or the Value Stack • Identify whether and how provider will offer notice when project is out of service, estimated time of restoration, whether and how customer will be compensated for any loss of production • Explain whether system is warrantied against defects and/or insured against damage or loss; explain consequences to customer if system becomes inoperable • Explain Provider's dispute resolution process and customer's right to contact the Department of Public Service
Length of the Agreement, End Date, and Renewal	<ul style="list-style-type: none"> • Term of subscription and process for contract renewal • Process to unsubscribe
Data Sharing and Privacy Policy	<ul style="list-style-type: none"> • Explain what data Provider will request from the customer's Utility and how that data will be used • Explain Provider's data privacy policies
Capacity Allocation/Subscription Size	<ul style="list-style-type: none"> • Explain how credits will be allocated to customer • Identify percentage of output to be credited to customer • Identify how unsubscribed and banked credits will be allocated
Guarantees	<ul style="list-style-type: none"> • For contracts with a production guarantee, an explanation of that guarantee and compensation for underproduction. For other contracts, a statement that "This agreement offers no production guarantee." • For contracts guaranteeing that a customer will save money, an explanation of that guarantee. For other contracts, a statement that "This agreement offers no guaranteed savings."
Rescinding Agreement Without Penalty	A residential customer may rescind this agreement without penalty by calling the toll-free number within 3 business days of receipt of the sales agreement.
Amount of Early Termination Fee and Method of Calculation	<ul style="list-style-type: none"> • Amount of Early Termination Fee, if any • Method of calculation of Early Termination Fee

On-Site Customer Disclosure Statement

Prepared for:

- [Customer Name]

Prepared by:

- [Provider Representative Name and Title]
- [Provider Name]
- [Provider Address]
- [Provider Telephone Number]

Costs of Contract	<ul style="list-style-type: none"> • Amount and due date of non-recurring charges • Amount and due date of recurring charges • If charges will increase or vary, by how much, based on what, and what notice will be given
Estimated Benefits	<ul style="list-style-type: none"> • Estimate of kWh generation of system • Estimate of dollar value of kWh generated by system • Estimate of net savings based on utility baseline, as detailed in UBP-DERS
Terms and Conditions of Contract	<ul style="list-style-type: none"> • Identify financial structure (e.g., PPA, lease or ownership) • Identify size of system • Identify applicable tax credits and whether customer or provider has rights to those credits • Identify whether credits will be valued based on Net Energy Metering or the Value Stack • Identify whether the agreement protects against any damage or loss to the customer's real and personal property, including whether the company will cover the costs of roof maintenance • Explain whether system is warranted against defects and/or insured against damage or loss; explain consequences to customer if system becomes inoperable • Provide copy of solar panel warranty • Explain Provider's dispute resolution process and customer's right to contact the Department of Public Service
Length of the Agreement and End Date	<ul style="list-style-type: none"> • Term of contract
Data Sharing and Privacy Policy	<ul style="list-style-type: none"> • Explain what data Provider will request from the customer's Utility and how that data will be used • Explain Provider's data privacy policies
Guarantees	<ul style="list-style-type: none"> • For contracts with a production guarantee, an explanation of that guarantee and compensation for underproduction. For other contracts, a statement that "This agreement offers no production guarantee." • For contracts guaranteeing that a customer will save money, an explanation of that guarantee. For other contracts, a statement that "This agreement offers no guaranteed savings."
Rescinding Agreement Without Penalty	A residential customer may rescind this agreement without penalty by calling the toll-free number within 3 business days of receipt of the sales agreement.
Amount of Early Termination Fee and Method of Calculation	<ul style="list-style-type: none"> • Options if customer moves • Amount of Early Termination Fee, if any • Method of calculation of Early Termination Fee

APPENDIX B. DER Oversight Requirements Table¹

Category	All DER Suppliers	CDG and On-Site Mass Market DG Only ²
Registration UBP-DERS § 3A	N/A	Required to submit registration packet including short form and sample contracts.
Customer Consent UBP-DERS § 2A	DER Supplier must receive explicit customer consent, either in writing, electronically, or through recorded verbal statement, and, for large or ongoing transactions, retain record of consent for longer of length of agreement or two years.	No additional requirements.

¹ This table provides a summary for ease of reference, but DER suppliers must refer to the UBP-DERS for full details on their obligations.

² CDG and On-Site Mass Market DG Providers are subject to all the requirements in both columns.

<p>Marketing UBP-DERS §§2B and 3B</p>	<p>Must not engage in false, misleading, or deceptive conduct or misrepresent rates or savings; must make reasonable efforts to provide requested information; must provide information in plain language; must comply with local, state, and federal door-to-door sales and telemarketing laws and regulations.</p>	<p>In addition, for transactions with mass market customers, must train marketing representatives in compliance and customer rights, marketing representatives must appropriately identify themselves and provide business card, must market to customer in a language that customer is comfortable in and provide documentation in same language, must keep record of territories.</p>
<p>Savings Forecast UBP-DERS §3B</p>	<p>N/A</p>	<p>For transactions with mass market customers, if savings forecast is provided, must also provide forecast based on utility historical data and clearly specify source of each forecast.</p>

<p>Responsibility for Agents UBP-DERS §2D</p>	<p>Must make commercially reasonable efforts to ensure that all contractors or third-party agents comply with the UBP-DERS and other relevant laws and regulations; must make reasonable efforts to ensure that any purchased customer list was not assembled through deceptive marketing.</p>	<p>Agents must follow CDG and On-Site Mass Market DG rules (other than registration).</p>
<p>Contracting UBP-DERS §3C</p>	<p>N/A</p>	<p>For transactions with mass market customers, must include key minimum terms in contracts, including three-day rescission period, price, information on customers' rights, and contact information; must also comply with further standards, based on NY-Sun requirements for on-site systems.</p>
<p>Standard Disclosure UBP-DERS §3D</p>	<p>No requirements; encouraged to consider development/use of forms based on CDG and On-Site Mass Market DG forms.</p>	<p>Required to provide Standard Disclosure Form to all mass market customers.</p>

<p>Customer Inquiries and Complaints UBP-DERS §2E and 3E</p>	<p>Must cooperate with Staff, Commission, or law enforcement efforts to address inquiries and complaints.</p>	<p>Must have local or toll-free telephone number and specified procedures for handling complaints, including acknowledgement within two days and response within 14 days.</p>
<p>Enforcement UBP-DERS §2F</p>	<p>The same enforcement process that currently applies to ESCOs should be used; based on severity and other factors, potential violation may result in informal contact, formal Staff contact, or a Commission-issued Order to Show Cause, with an opportunity to respond and potential consequences ranging from a warning, to a requirement to cure and notify customers to a ban from Commission-authorized programs and markets.</p>	<p>No additional provisions.</p>
<p>Reporting UBP-DERS §2G and 3F</p>	<p>Must provide Staff with information on request.</p>	<p>Must file annual reporting on number of customers and services provided, as well as send annual reports to customers per the VDER Implementation Order.</p>

APPENDIX C. Applicable Provisions of the Home Energy Fair Practices Act to CDG Providers, On-Site Mass Market DG Providers, and Other DER Suppliers Selling Gas or Electricity

<u>16 NYCRR §</u>	<u>Summary of Provision</u>	<u>Circumstances Where Provision Would Apply</u>
11.6	Customers may designate a third party to receive notifications relating to termination or other credit actions.	Where a customer requests that such notifications be sent to a third party.
11.12	Security deposits may not be required for residential service, unless the customer is a seasonal or short-term customer.	Pursuant to this provision, security deposits are generally not permitted for transactions with residential customers. The up-front purchase of DG equipment or a share of a CDG project does not constitute a security deposit and is permitted.
11.13	Meter reading and estimated billing procedures.	Where a provider bills based on a metered quantity and sometimes uses an estimated bills, that provider must comply with this provision.
11.14	Regulations for backbilling residential accounts.	Where a provider seeks to bill for service rendered more than six months prior to the mailing of the bill, that provider must comply with this provision.
11.15	Procedures for assessing late payment and other charges related to an unpaid balance of a bill.	Where a provider seeks to impose a late fee or similar charge, that provider must comply with this provision.

11.16	Requirements for the information and charges for services on bills.	Each bill must include the information required by this section, as relevant to the service provided, including: the name, address and account number of the customer; the charges for service; the quantity of energy provided; amount owed for the latest period, the date by which payments for the latest period may be paid without penalty, the penalty charge for late paid bills, credits from past bills and any amounts owed and unpaid from previous bills; and an explanation of how the bill may be paid, including.
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<p>11.20</p>	<p>Procedures for customer complaints.</p>	<p>When receiving a customer complaint, the provider must comply with the relevant parts of this section, including: allowing complaints to be accepted and processed in a simple manner and form; shall promptly investigating any complaint in a fair manner and report the results to the complainant; offering the complainant the opportunity to receive the report in writing; and, when resolving a complaint in whole or in part in its favor, informing the complainant of the availability of the commission's complaint handling procedures, including the commission's address and telephone number.</p>
<p>11.22</p>	<p>The Commission may waive any HEFPA requirement.</p>	<p>Providers may request waiver of otherwise applicable provisions.</p>

**APPENDIX D. Questions for Comment Regarding Potential
Additional Provisions**

As described in the body of this Order, comments are solicited in response to the following questions to facilitate Commission consideration of UBP-DERS provisions regarding a limit on or other standards applicable to early termination fees for all DER suppliers, the requirement of production guarantees as part of some or all CDG and on-site mass market DG contracts, and a limit on annual escalation provisions in CDG and on-site mass market DG contracts. Comments should be filed by January 8, 2018.

1. Should a limit on early termination fees charge to mass market customers be applied to all DER suppliers, or to a subset of all DER suppliers?
 - a. Should the limit on early termination fees, consistent with the limit on ESCO early termination fees, be set at a) \$100 for any contract with a remaining term of less than 12 months, b) \$200 for any contract with a remaining term of more than 12 months or c) twice the estimated average monthly bill, provided that an estimate of an average monthly bill and amount of any termination fee was provided to the customer at the time of the sales agreement? Or should it be set at a different amount, or using a different method than a fixed amount?
 - b. Should contracts involving the installation of DER equipment on customer property be excluded from this limit or be subject to a modified version of it?
2. Should CDG or on-site mass market DG providers be required to include a production guarantee in their contracts with mass market customers?

- a. Should that requirement be applied to all contract types, or only to a subset of the standard contract types, which are purchases, leases, and power purchase agreements (PPAs)?
 - b. Should there be any further requirements on the level of production guaranteed or on the compensation if a guarantee is not met?
3. Where a CDG or on-site mass market DG contract with a mass market customer includes provisions for escalation of pricing over the term of the contract, should a limit be applied to that escalation?
 - a. Should escalation provisions be limited to a maximum of three percent annually?

APPENDIX E. List of Commenters

Public Interest Interveners

Advanced Energy Economy Institute ¹	AEEI
Association for Energy Affordability, Inc.	AEA
Environmental Defense Fund	EDF
Coalition for Community Solar Access	CCSA
Clean Energy Organizations Collaborative ²	CEOC

Providers & Organizations

Atlantic Energy LLC	AE
Advanced Energy Management Alliance	AEMA
Bluerock Energy, Inc.	Bluerock
Direct Energy ³	Direct Energy
Distributed Sun LLC	Distributed Sun
Energy Spectrum, Inc.	Energy Spectrum
Energy Technology Savings	ETS
Energywiz, Inc.	Energywiz
Impacted ESCO Coalition ⁴	
Mission:data	MD
National Energy Marketers Association	NEMA
Northeast Clean Heat and Power Initiative	NECHPI
NRG Energy, Inc.	NRG
Retail Energy Supply Association	RESA
SolarCity Corporation	SolarCity
Solar Energy Industries Association	SEIA

¹ Advanced Energy Economy Institute is a charitable and educational organization affiliated with Advanced Energy Economy (AEE), a national business association, and represents the Alliance For Clean Energy New York (ACENY) and the New England Clean Energy Council (NECEC), which are regional partners with AEE.

² Includes: Pace Energy and Climate Center; Association for Energy Affordability; Citizens Campaign for the Environment; Environmental Defense Fund; Natural Resources Defense Council; New York Geothermal.

³ Includes: Direct Energy Business Marketing, LLC; Direct Energy Business, LLC; Direct Energy Services, LLC; Direct Energy Solar.

⁴ The Coalition represents the interests of small and medium sized ESCOs in New York State.

Solar Liberty Energy Systems SLES

Customer Representatives

AARP AARP
Consumer Power Advocates CPA
Multiple Intervenors⁵
Public Utility Law Project of New York, Inc. PULP

Utilities

Exelon Companies⁶ Exelon
Joint Utilities⁷ JU
National Fuel Gas Distribution Corporation NFG

Governmental Entities

City of New York NYC
New York State Energy Research
and Development Authority NYSERDA
New York State Department of State,
Utility Intervention Unit UIU

⁵ An unincorporated association of approximately 60 large industrial, commercial and institutional energy consumers with manufacturing and other facilities located throughout New York State.

⁶ The Exelon Companies consist of Exelon Corporation and its subsidiaries, Constellation, NewEnergy, Inc., Exelon Microgrid LLC, Constellation Energy Nuclear Group LLC, Nine Mile Point Nuclear Station LLC, R.E. Ginna Nuclear Power Plant LLC, Exelon Generation Company LLC, Baltimore Gas & Electric Company, Commonwealth Edison Company and PECO Energy Company.

⁷ The Joint Utilities are: Central Hudson Gas & Electric Corporation; Consolidated Edison Company of New York, Inc.; New York State Electric & Gas Corporation; Niagara Mohawk Power Corporation d/b/a/ National Grid; Orange and Rockland Utilities, Inc.; and Rochester Gas and Electric Corporation.