March 5, 2018

Kathleen H. Burgess
Secretary
New York Public Service Commission
Three Empire State Plaza
Albany, New York 12223

Re: UIU Comments on Staff Report on Low-Income Community Distributed Generation Proposal

Case 15-E-0751 – In the Matter of the Value of Distributed Energy Resources.


Case 15-E-0082 – Proceeding on the Motion of the Commission as to the Policies, Requirements and Conditions for Implementing a Community Net Metering Program.

Dear Secretary Burgess:

The Utility Intervention Unit (UIU) of the New York State Department of State’s Division of Consumer Protection submits these comments in response to the Notice of Proposed Rulemaking1 in the New York State Register seeking comments on the Department of Public Service Staff’s Report on Low-Income Community Distributed Generation (CDG) Proposal (Staff Report) filed on December 15, 2017 in the above captioned proceedings. In recognition of the limited low-income customer participation in CDG projects approved under the Value of Distributed Energy Resources (VDER) Phase tariffs, the Commission directed Staff to develop and file a Low-Income CDG Proposal.2 The Staff Report

1 See SAPA No. 15-E-0751SP12, 2018-1 N.Y. St. Reg. 29 (January 3, 2018) (“SAPA Notice”).
summarized proposals and/or comments from the Aligned Parties;³ the City of New York;⁴ the Joint Utilities;⁵ and Multiple Intervenors.⁶ It also discussed “various Staff proposals for market interventions that have the potential to encourage and support low-income customer participation in CDG.”⁷ The Staff proposals included: 1) a potential interzonal credit;⁸ 2) a bill discount pledge (BDP) program,⁹ 3) a discussion of the role for already approved New York State Research and Development Authority (NYSERDA) programs,¹⁰ 4) potential use of the NYSERDA Income Verification Service to support the BDP

³ The Aligned Parties filed a consensus proposal on December 4, 2017. The proposal included 1) recommendations for two new value stack components (for environmental justice projects and those subscribing LMI customers), 2) suggestions for NYSERDA and NY Green Bank programming, 3) recommendations for a model for communities interested in Community Choice Aggregation (CCA) that allows for integrations with a local clean energy project, and 4) recommendations for a process to develop “Market Transformation Adders and other incentives designed to make it extra attractive to develop projects providing DER services that meet certain criteria.” See Case 15-E-0751, supra, Recommendations to the LMI VDER Working Group from Aligned Parties (filed December 4, 2017) p. 25. The Aligned Parties include Alliance for a Green Economy, Association for Energy Affordability, Azure Mountain Power, Binghamton Regional Sustainability Coalition, Citizens for Local Power, Ecogy Solar, Green Street Solar Power LLC, Natural Resources Defense Council, New York City Environmental Justice Alliance, New York Lawyers for the Public Interest, Pace Energy and Climate Center, ProjectEconomics, PUSH Buffalo, Solstice, Vote Solar, and WE ACT for Environmental Justice (together, the Aligned Parties).

⁴ The City of New York recommended that 1) an environmental justice adder should be incorporated into the value stack calculation, and 2) the working group explore ways to address “the perceived credit risks posed by LMI customers when compared to customers of other income levels.” See Staff Report at 17.

⁵ Joint Utilities provided recommendations regarding 1) credit enhancements for financiers and 2) potential low-income adders, See Staff Report at 18.

⁶ Staff Report at 19 (“While not active participants in the LMI Working Group, Multiple Intervenors (MI) provided written comments. MI states that it does not favor proposals that would create new, customer-funded subsidies designed to promote participation in CDG projects by LMI customers.”)

⁷ Id. at 19.

⁸ Id. at 20. The Staff Working Group Chairs determined “that interzonal crediting would best be further explored in the Value Stack Working Group,” and UIU reserves the right to comment on any proposed interzonal credit in the Value Stack Working Group.

⁹ Id. at 20-28.

¹⁰ Id. at 28-29
program,11 5) loss reserve funding for CDG projects serving low income subscribers,12 and 6) a potential environmental justice location incentive.13

Staff’s proposed BDP program 1) allows low-income customers to redirect all or a portion of their utility bill discount to investments in CDG projects, and 2) requires that the bill reduction provided through participation in the BDP program is the same or greater than the foregone portion of the utility low-income program bill discount.14 Staff observed that several aspects of the proposed BDP program may require further development, including: 1) data privacy and customer consent procedures,15 2) utility billing and crediting,16 3) additional consumer protection measures, and 4) the potential role of developers and/or utilities in maintaining a waitlist for the BDP program.17

The Staff Report offers a helpful discussion of both past barriers to low-income clean energy participation and potential solutions. Currently, low-income residential customers are less able to access clean energy programs than their higher income peers, and so risk being shut out of the benefits such programs may provide.18 CDG projects offer an

11 Staff Report at 29 (stating “NYSERDA currently conducts income verification for its income-eligible programs, and is already examining ways to lower the costs of such verifications. In order to facilitate the BDP program, Staff proposes that NYSERDA extend its income verification service to developers seeking to secure BDP subscribers for their CDG project.”). Staff further suggested that NYSERDA explore using the New York State Office of Temporary and Disability Assistance (OTDA) system that allows telephone companies to determine subscriber eligibility for the telephone Lifeline program to verify customer income eligibility. Id. at 29. Staff further directed that NYSERDA “develop appropriate program rules to ensure that its services are used only for qualifying CDG projects, and that appropriate pre-qualification is conducted by the developer or their partner organizations.” Id. 30. UIU agrees that if this proposal moves forward, there must be strong consumer protection measures in place to ensure that personal customer data is 1) only shared with a developer after the customer gives informed affirmative consent, 2) is adequately protected from potential cyber security risks, and 3) used only if enrolling interested low-income customers in BDP CDG projects.
12 Staff Report at 32 (stating “Staff proposes that NYSERDA explore the potential for a loss reserve for CDG projects serving low-income subscribers, and if financially viable, establish such a loss reserve. NYSERDA advises that it is developing such a strategy in collaboration with NY Green Bank.”). UIU looks forward to learning about NYSERDA’s exploration of this topic and reserves comment on this proposal until additional details are provided (such as the amount of NY Green Bank funding proposed, number of low-income customers who can benefit, etc.).
13 Staff concluded the environmental justice incentive will be considered in the Value Stack Working Group; thus, UIU will not discuss this proposal here. See Staff Report at 32-34.
14 See Id. at 22 (stating “Although the bill discount itself would be reduced for these participants, they would also receive commensurate bill credits from the CDG project, resulting in the same or lower electricity bills as they would have under [the] utility’s low income program.”).
15 Id. at 25 (stating “A framework for appropriate information-sharing between CDG developers and the utility (and as appropriate, NYSERDA) would need to be put in place, since the utilities have information on current Affordability program enrollees’ locations and energy usage.”).
16 See id. at 23 (providing “In cases where the BDP amount is insufficient to fully cover subscription costs, some additional customer contribution may be required.”).
17 See id. at 25.
18 Under participation of low-income customers in CDG occurs because low-income customers are more likely to rent their homes and cannot install rooftop solar, low-income customers are less likely to have the resources to pay up-front installation costs, and few CDG projects are in New York State have focused on
opportunity to bridge this unequitable divide. However, despite the best efforts of the Public Service Commission (PSC) and interested parties, the market for CDG projects has not yet become workably competitive for low-income customers. UIU remains hopeful that low-income customer access to CDG can be expanded in a cost-effective manner, and to that end, offers the following recommendations regarding the proposals presented in the Staff Report. Further, if the Commission adopts Staff’s proposed BDP program, UIU suggests that the Commission establish a collaborative process for parties to address the program’s inherent complex implementation issues.

1. Additional Consumer Protections Are Necessary to Protect BDP Program Participants.

To ensure that ratepayer-funded utility bill discounts are used efficiently, UIU recommends that the BDP program include additional consumer protections. While the Commission’s Distributed Energy Resource (DER) Oversight Order, which established the Uniform Business Practices (UBP) for DERS (UBP-DERS) provides a helpful framework for regulation, as Staff observed, “the BDP program must have program-specific rules and consumer protection measures, disclosures, and accountability measures to ensure that financially vulnerable customers are not taken advantage of or otherwise compromised.”

A) UIU supports Staff’s Proposal that CDG Developers Provide Low Income Customers with Guaranteed Savings Products.

The BDP Program’s should benefit customers and efficiently use utility low-income program funds. Accordingly, the Commission should require CDG developers to provide guaranteed savings to low-income customers, similar to the guarantee required of energy reaching low-income customers. See e.g., National Renewable Energy Laboratory, Shared Solar: Current Landscape, Market Potential, and the Impact of Federal Securities Regulation (April 2015) at V. available at http://www.nrel.gov/docs/fy15osti/63892.pdf.

19 See, e.g., Case 16-E-0622, Petition of Consolidated Edison Company of New York, Inc. for Approval of a Pilot Program for Providing Shared Solar to Low-Income Customers (October 31, 2016) at 2 (Con Edison Petition) (explaining there are no CDG projects in the interconnection queue in Con Edison’s service territory focused on serving low-income customers.). While the Con Ed Petition to serve low income customers has been approved, it will serve only approximately 800 to 1,600 customers in Phase 1. Id. at 3.

20 UIU’s silence on any proposal or issue should not be construed as agreement.


22 Staff Report at 26.
service companies (ESCOs). At the end of a program quarter or year, if the developer determines that a customer did not achieve bill neutrality or net savings (when compared to their energy bills if not in the BDP program) then the developer must promptly refund the customer the difference. The Commission should monitor CDG developers’ for compliance and impose penalties for those not in compliance, including, but not limited to, prohibiting future participation in the BDP program.

B) CDG Developers Must Apply for Commission Approval to Participate in BDP Program.

Similar to the scrutiny applied to ESCOs seeking a waiver to provide guaranteed savings to low income customers, CDG developers requesting to serve BDP participants should provide evidence of their ability to provide the required savings. As Staff suggested, “checks and balances for each developer’s BDP program…” may be required. UIU recommends that the developers 1) present credible evidence that they can provide net bill savings to BDP program participants, and 2) receive approval to serve BDP program participants for one year (this approval can be renewed upon Commission confirmation that the developer met the requirements of participation in BDP programs).

23 See Case 12-M-0476 et al., Proceeding on Motion of the Commission to Assess Certain Aspects of the Residential and Small Non-Residential Retail Energy Markets in New York State, Order Adopting a Prohibition on Service to Low-Income Customers by Energy Service Companies, (issued December 16, 2016) pp. 24-25 (“if an individual ESCO wishes to offer a guaranteed savings program to APP customers it may petition the Commission for a waiver of the prohibition…ESCOs seeking such a waiver must be able to demonstrate their willingness to develop a program that ensures delivery of the claimed savings.”).

24 In prior comments, UIU has suggested that ESCOs provide low-income customers with a quarterly reconciliation process and on-bill price comparison. See Case 12-M-476 et al., supra. UIU Initial Comments on Ambit New York and Zone One Energy Petition for Waiver to Serve Low-Income Customers (filed March 27, 2017) p. 4. In this case, UIU requires more information about the billing, crediting, and output production models of CDG projects to determine if quarterly, semi-annual, or annual reconciliations are the best approach to meet the needs of BDP participants.

25 UIU here offers general principles for how the guaranteed savings products presented to BDP participants should work. In the implementation phase, developers, utilities, Staff, and other interested parties can analyze potential options for promptly resolving billing/crediting/refund issues.

26 UIU observes that requiring developers to post a financial security such as a performance bond may also be a helpful condition to ensure customers can be made whole if the savings guarantee is not met. See e.g., Case 15-M-0180, supra, Comments of the Utility Intervention Unit on Supplemental Staff Whitepaper on Distributed Energy Resource (DER) Oversight and Proposed Uniform Business Practices for DERS (filed June 9, 2017) p. 4 (“UIU recommends that DERS be required to post performance bonds that will both (1) make consumers whole for any market abuses that occur and (2) protect the electric system in the event that a DERS suddenly ceases operations that could potentially create a reliability problem.”)

27 See Case 15-M-0127 et. al., Order Adopting a Prohibition on Service to Low-Income Customers By Energy Service Companies (issued December 16, 2016) p. 25 (stating that at a minimum the ESCO must provide the following assurances: 1) “an ability to calculate what the customer would have paid to the utility; (2) a willingness and ability to ensure that the customer will be paying no more than what they would have paid to the utility; and (3) appropriate reporting and ability to verify compliance with these assurances.”).

28 Staff Report at 27-28.
C) Low-income Customers Should Not Pay an Early Termination Fee if They Give the Project Sponsor One Bill Cycle of Notice.

Low-income customers who provide ample notice should not pay an early termination fee to leave a CDG contract.\textsuperscript{29} One bill cycle should be adequate notice for the Sponsor to switch the participant out of the project and enroll a replacement subscriber.\textsuperscript{30} This protection would be especially helpful to low-income customers who often have limited access to capital resources and would be most hurt by the imposition of an early termination fee. Customers who terminate their BDP project subscription should be switched out of the project within one bill cycle.

If the Commission does not prohibit early termination fees, the Commission should, at a minimum, limit the amount of such fees, consistent with protections it has adopted for ESCO customers.\textsuperscript{31} The amount of an early termination fee should be pro-rated depending on the amount of time remaining in the contract.\textsuperscript{32}


The UBP-DERS already requires that the CDG Customer Disclosure Statement provide the length of the agreement, end date, and renewal process.\textsuperscript{33} UIU recommends that CDG developers enrolling low-income customers obtain a customer’s affirmative informed consent for any contract renewals or changes.\textsuperscript{34}. An affirmative consent requirement allows customers the opportunity to review any updated contract terms and

\textsuperscript{29} UIU has suggested in prior comments that residential customers should not pay an early termination fee for CDG project subscriptions if they provide ample notice. See e.g. Case 15-E-0082, Proceeding on Motion of the Commission as to the Policies, Requirements and Conditions for Implementing a Community Net Metering Program, UIU Comments on Community Distributed Generation for Low-Income Customers (filed January 20, 2017) p. 5.

\textsuperscript{30} UIU intends to recommend during collaborative implementation discussions that Sponsors explore the merits of maintaining waitlists of prospective subscribers to facilitate expedient replacement processes if early terminations occur.

\textsuperscript{31} ESCO UBP § 5(B)(5)(b) (an ESCO’s early termination fee cannot exceed "$100 for any contract with a remaining term of less than 12 months; or b) $200 for any contract with a remaining term of more than 12 months; or c) twice the estimated bill for energy services for an average month, provided that an estimate of an average monthly bill was provided to the customer when the offer was made by the ESCO along with the amount of any early termination fee.").

\textsuperscript{32} This recommendation is consistent with wireless service provider contracts, which provide for early termination fees that decrease over the course of the contract term. See, e.g., Verizon Wireless Customer Service Agreement, available at https://www.verizonwireless.com/legal/notices/customer-agreement/.

\textsuperscript{33} See UBP-DERS Order at Attachment One: Information to be Included in Customer Disclosure Statements.

\textsuperscript{34} UIU observes that this principle may require further refinement in a collaborative implementation process to discuss the most efficient and transparent way to structure this contract renewal/ modification process.
decide if subscribing to the CDG project is still beneficial for them. Additionally, UIU supports Staff’s suggestion that “protections against hidden fees (late payment, contract termination, etc.) or unreasonable fee or rate escalators” be further considered. This topic could be explored during a collaborative implementation process, described in Section 2 below.

2. If the Commission Authorizes Further Exploration of the BDP Program, A Collaborative Process Should be Established to Determine Important BDP Implementation Issues.

The Staff Report raises important high-level implementation issues that could best be evaluated through a collaborative process with utilities, developers, Staff, and interested parties, culminating in an Implementation Plan for the BDP Program. The Commission usually requires utilities to submit implementation plans for pilot programs or other important projects that are reviewed (and potentially modified) prior to implementation. In this case, the proposed BDP program (that will theoretically be operating in each utility service territory) requires close coordination between Staff, utilities, developers, and other stakeholders to consider and evaluate important details such as how BDP program billing and crediting will work for low-income customers. Additional details that must be considered include: 1) the benefits/costs/risks of designating utilities and/or developers with the responsibility of maintaining a waitlist; 2) the process for monitoring and enforcing the guaranteed savings requirement, and 3) additional safeguards to ensure that the BDP program is a cost-effective use of utility low-income program funds.

---

35 Staff Report at 27.
36 See e.g., Case 16-E-0622, supra, Order Approving Shared Solar Pilot Program with Modifications (issued August 2, 2017) p. 14 “In this Order, the Commission authorizes Con Edison to begin developing the first phase of the pilot. To that end, Con Edison shall develop an Implementation Plan in consultation with Staff, and will submit that Implementation Plan for Commission approval prior to beginning project construction or implementation activities.” See also Case 14-M-0565, Proceeding on Motion of the Commission to Examine Programs to Address Energy Affordability for Low Income Utility Customers, Order Adopting Low Income Program Modifications and Directing Utility Filings (issued May 20, 2016) (“The Commission directs filings by utilities with more than 25,000 customers, to achieve implementation of this framework, including any necessary program modifications, timelines, estimation of costs and proposals for cost recovery, including the details of the reconciliation of actual program costs to amounts reflected in rates.”)
37 Staff Report at 26. If utilities maintain the waitlist, such administration results in additional costs for which the utilities may seek recovery from ratepayers. Careful consideration must be given to any additional costs consumers are asked to bear.
Conclusion

UIU appreciates this opportunity to comment, and urges the Commission to adopt the recommendations herein when reviewing Staff’s Report.

Respectfully submitted,

Erin P Hogan

Erin P. Hogan
Director, Utility Intervention Unit
518-473-0727
erin.hogan@dos.ny.gov

Gregg Collar
Utility Analyst
518-474-1811
Gregg.collar@dos.ny.gov

Kathleen O’Hare
Attorney 1
518-486-7758
kathleen.ohare@dos.ny.gov