Hon. Kathleen H. Burgess  
Secretary  
New York State Public Service Commission  
Three Empire State Plaza  
Albany, New York 12223-1350  

Re: Case 15-E-0751 - In the Matter of the Value of Distributed Energy Resources.  
Case 15-E-0082 - Proceeding on 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 this letter to address questions posed by the New York State Public Service Commission (Commission) in Appendix A of the Order on Phase One Value of Distributed Energy Resources Implementation Proposals, Cost Mitigation Issues, and Related Matters (September VDER Order) issued on September 14, 2017 in the above referenced proceedings. The Commission sought stakeholder responses to six questions related to its consideration of an increase in the project size cap for entities eligible for Value of Distributed Resources (VDER) Phase One compensation from 2 megawatts (MW) to 5 MW. The Commission established the VDER Phase One compensation scheme for eligible DER resources in its March 2017 Order on Net Energy Metering Transition, Phase One of Value of Distributed Energy Resources, and Related Matters (March VDER Order). In this Order, the Commission directed that the compensation for eligible DERS, such as community distributed generation (CDG) projects that are 2 MW or less, transition from net energy metering.

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1 UIU acknowledges that the Commission established November 20, 2017 as the deadline for comments on the questions in Appendix A of the September VDER Order. However, UIU submits these comments to address the new issues that arose when the Solar Energy Industries Association (SEIA) submitted a Petition for Rehearing of the Order Establishing Oversight Framework and Uniform Business Practices for Distributed Energy Resource Suppliers and the Commission issued a notice that it is considering the rehearing request.


(NEM)\textsuperscript{4} to the Value Stack (VS).\textsuperscript{5} Certain VDER eligible projects that serve mass market customers are eligible to receive an adder to the Value Stack in the form of a Market Transition Credit (MTC).\textsuperscript{6} This MTC results in “some net revenue impact” for non-participating customers.\textsuperscript{7} Recognizing these cost shifts, the Commission sought to limit the impact on non-participating ratepayers by establishing a maximum incremental net annual revenue impact of 2% for each utility’s residential customer class.\textsuperscript{8} To achieve this goal, the Commission established a system of tranches that include (1) a limit on MW of CDG projects that could be installed, and (2) a declining MTC value for projects connected in each tranche. In January 2018, the Commission issued an Order to address the utilities that already reached their maximum capacity for tranches 0 through 3, which the Commission had established in the March VDER Order.\textsuperscript{9}

On November 20, 2017, the same day that stakeholder comments were due on the September VDER Order Appendix A questions, the Solar Energy Industries Association (SEIA) filed a petition for rehearing of the Commission’s Order Establishing Oversight Framework and Uniform Business Practices for Distributed Energy Resource Suppliers issued on October 19, 2017 (UBP-DERS Order). The UBP-DERS Order established a set of rules, the UBP-DERS, and an oversight framework for Distributed

\textsuperscript{4}Id. at 24-25 (“NEM was instituted by statute, subject to a rated generating capacity ceiling in each utility territory equal to one percent of the 2005 electric demand for each utility, respectively… Since the Commission’s decision to raise the caps to 6%, and subsequent adoption of temporary floating caps, circumstances have changed…Second, it is now clear that volumetric crediting, on which NEM is based, fails to reflect the full and accurate value that DER provide to the grid. Third, significant interest in the Commission’s CDG policy is dramatically accelerating the level of DER that will be integrated on the system, such that associated costs to non-participants could significantly increase if prompt action is not taken to more accurately compensate these resources and fairly allocate the costs.”).

\textsuperscript{5}Id. at 15-16 (“Compensation under the Value Stack for net hourly injections will be calculated based on the value associated with: 1) Energy Value, based on the Day Ahead hourly zonal locational-based marginal price (LBMP), inclusive of losses; 2) Capacity Value, based on retail capacity rates for intermittent technologies and the capacity tag approach for dispatchable technologies based on performance during the peak hour in the previous year; 3) Environmental Value, based on the higher of the latest CES Tier 1 Renewable Energy Certificate (REC) procurement price published by NYSERDA or the Social Cost of Carbon (SCC); and 4) Demand Reduction Value (DRV) and Locational System Relief Value (LSRV), based on a deaveraging of utility marginal cost of service (MCOS) studies, performance during the 10 peak hours, and further process as detailed in the Discussion Section.”).

\textsuperscript{6}Id. at 16 (“CDG projects compensated under the Value Stack tariff will be eligible for an MTC, equal to the difference between the “Base Retail Rate” and “Estimated Value Stack” as detailed below in the Discussion Section. CDG projects will receive a pro-rata MTC based on the portion of their project that is dedicated to serving small customers and shall not receive a DRV for that portion of their project. Eligibility for MTC compensation will be subject to the availability of MW capacity allocations in each utility that are derived from the incremental 2% net revenue impact limitation, summarized below.”)

\textsuperscript{7}Id. at 32-33. (As the Commission explained, “Because the utilities are required, through revenue decoupling mechanisms, to bill customers at rates that result in net revenue equal to the approved annual delivery revenue requirement, any net revenue impact will be directly passed on to customers, with nonparticipating customers bearing the brunt of the impact since participating customers have offset much of their usage. Similarly, because most surcharges are designed to collect fixed total amounts based on Commission direction, reduced surcharge collections from NEM customers result directly in increased surcharge collections from non-participating customers…Phase One NEM compensation results in the same potential impacts as traditional NEM compensation, subject to a limited duration. While the Value Stack methodology manages, and reduces these impacts, projects compensated under the Value Stack tariff that receive an MTC will still result in some net revenue impact.”).

\textsuperscript{8}Id. at 16 (“Eligibility for MTC compensation will be subject to the availability of MW capacity allocations in each utility that are derived from the incremental 2% net revenue impact limitation.”).

\textsuperscript{9}Case 15-E-0751, \textit{supra}, Order Regarding Compensations of Community Distributed Generation Projects (issued January 18, 2018).
Energy Resource Suppliers (DERS), some of whom receive VDER compensation that is subsidized\(^{10}\) by ratepayers in their respective utility service territories. The SEIA Petition claims the Commission made errors of law by asserting jurisdiction over DERS.\(^{11}\) On December 26, 2017, the Secretary issued the Notice Concerning Petition for Rehearing, which indicated the Commission is considering the Petition and may make modifications to the UBP-DERS Order.\(^{12}\)

UIU asks the Commission to recognize SEIA’s disingenuous arguments in the two proceedings. In one proceeding, SEIA requests subsidies to support DER market development from the ratepayers of New York through the Commission-authorized VDER compensation scheme while simultaneously asserting in a related proceeding that the Commission lacks jurisdiction over these DERS. In past comments, SEIA and Vote Solar (the Solar Parties) have acknowledged, “for many years New York has supported the growth and development of distributed energy resources through various policies, programs and regulations, the majority of which have been developed and implemented by the … Commission [“] and NYSERDA.”\(^{13}\) SEIA has further acknowledged that the VDER compensation scheme imposes cost shifts on non-participating ratepayers\(^{14}\) who pay surcharges to subsidize and encourage DER market growth. In spite of these acknowledged cost shifts, SEIA has requested that the Commission authorize a VDER compensation scheme that uses non-participating ratepayer funds to “…achieve a strong and sustainable solar market….”\(^{15}\) By contrast, when discussing the ability of the Commission to take action to protect these ratepayer investments, SEIA claims the “…Commission’s broad jurisdictional declaration in the UBP-DERS Order is without statutory basis and will create regulatory uncertainty among DER suppliers that will, in turn, stunt the Commission’s goal of fostering the proliferation of DER suppliers in New

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\(^{10}\) UIU uses the term subsidy here to describe the net revenue shift occurring between DER customers and non-participating ratepayers due to the Phase One VDER tariff. See supra note 7 and accompanying text.

\(^{11}\) See Case 15-M-0180, In the Matter of Regulation and Oversight of Distributed Energy Resource Providers and Products, Petition for Rehearing of the Solar Energy Industries Association (filed November 20, 2017) p. 2 (SEIA Petition) (“SEIA now petitions for rehearing of the UBP-DERS Order’s holding that the Commission has jurisdiction over DER suppliers on the basis that they are (1) “electric corporations” as defined by Public Service Law (“PSL”) §§ 2 (13) or 53, (2) otherwise subject to jurisdiction under PSL Articles 1 and 2, or (3) participants in Commission-authorized or directed programs.”). UIU notes that the Commission has solicited comments on the SEIA petition. UIU will respond to the arguments raised in the SEIA petition in a separate filing.

\(^{12}\) Case 15-M-0180, supra, Notice Concerning Petition for Rehearing (issued December 26, 2017) (Petition for Rehearing Notice) (“(u)pon conducting its rehearing evaluation, the Commission may reaffirm its initial decision or adhere to it with additional rationale, modify the decision, reverse the decision, or take such other or further action as it deems necessary.”).

\(^{13}\) Case 15-E-0751, supra, SEIA and Vote Solar Initial Comments in Response to the Staff Report and Recommendations in the Value of Distributed Energy Resources Proceeding (filed December 5, 2016) p. 2.

\(^{14}\) See id. at 10 (“the Phase One Tariff may result in a shift in cost-recovery from participating to non-participating ratepayers”)

\(^{15}\) See e.g., Case 15-E-0751, supra, SEIA and Vote Solar Reply Comments p. 2 (filed December 19, 2016) (“In the [initial] comments, the Solar Parties called for a 4% revenue impact upper limit, payment of 100% Market Transition Credit (MTC) to generation from Community Distributed Generation (CDG) projects, a capacity value for intermittent technologies derived in a transparent way from the retail supply rate, a more stable delivery (D) value for Commercial and Industrial/Remote Net Metered (C&I/RNM) projects, a project compensation methodology that is at least a 25 year term, and support of Staff’s recommended grandfathering policy”).
Thus, it appears SEIA accepts the Commission’s jurisdiction only when it authorizes compensation schemes benefiting DERS.

Projects Greater than 2 MW Should Not Receive an MTC Subsidy

UIU recognizes the Commission’s efforts to develop DER rate structures that support the State’s clean energy goals and balance the need for just and reasonable rates for non-participants. In its September Order, the Commission discusses how an expansion of the VDER project size cap to 5 MW may call for modifications to some elements of the VDER compensation scheme, such as the MTC, to ensure ratepayers share in the expected project cost savings. Another essential element to protecting ratepayers is developing a set of rules for DERS. However, industry groups are currently challenging the Commission’s jurisdiction and its ability to protect ratepayers from harms in the DER market.

Because of the potential regulatory uncertainty behind the MTC payment structure and the long-term nature of these contracts, UIU recommends that the Commission provide no MTC subsidy for projects greater than 2 MW. While UIU recognizes the Commission's efforts to analyze and prescribe a more granular value to DERS, it is unclear if the values provided in the MTC undervalue or overvalue certain projects. Some parties argued the MTC is a catch-all meant to cover the values of DERS that were not identified or captured in the Phase One Value Stack, while others argued it is merely funding to stimulate market growth. Assuming the purpose of the MTC is, in part, to lower CDG project development costs, this additional subsidy may be unnecessary to fund projects greater than 2 MW.

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16 See SEIA Petition at 6.
17 See September VDER Order at 47 ("If projects up to 5 MW capacity were eligible for the same MTC as projects of 2 MW or less capacity, the policy change could fail to meet its goal of sharing the savings between developers and CDG members, on the one hand, and non-participants through reduced net revenue impacts resulting from the MTC, on the other.").
18 UIU observes that the MTC appears to be an administratively set value that has a small incremental reduction for each subsequent tranche in the utility service territory. See March VDER Order at 129 ("Once the Tranche 1 allocation has been reached, projects will be placed in Tranche 2 and receive Value Stack compensation with a reduced MTC. We agree with the commenters that argue that Staff’s 10% reduction in compensation from Tranche 1 to Tranche 2 is too large and instead adopt a 5% reduction."). UIU observes that New York ratepayers are experiencing compounding bill impacts from rate cases and other initiatives, and cautions against a “gradual” approach towards DER MTC payments that may result in non-participants bearing costs for DERS beyond the value they bring to the system.
19 Case 15-E-0751, supra, Reply Comments of SEIA and Vote Solar (filed December 19, 2016) p. 8 ("the MTC is intended to stabilize the value stack, provide a gradual transition from retail rate net metering to a new tariff based on unbundled values, and represent the substantial unquantified values known to be provided by DER to all ratepayers.").
20 Case 15-E-0751, supra, Initial Comments of Multiple Intervenors on Staff Report and Recommendations (filed December 5, 2016) pp. 13-14 ("As detailed, infra, Multiple Intervenors opposes the proposed use of an MTC for multiple reasons, including its belief that the MTC represents an economic subsidy in excess of the actual and calculated value provided by DERs.").
21 Case 15-E-0751, supra, Notice Seeking Comments (issued May 12, 2017) p. 4 ("Projects under net metering, as well as under the VDER tariff, are limited to a maximum rated capacity of 2 megawatts (MW). Increasing this maximum to 5 MW would significantly decrease project costs, which could permit more projects to be built at a lower cost to both developers and ratepayers.").
In the January Order, the Commission acknowledged, “the fact that Tranche 3 has been filled so quickly in O&R and Central Hudson indicates that the Tranche 3 MTC provides sufficient compensation for the development of a variety of projects in those service territories.” 22 This rapid subscription has been filled with the current 2 MW project capacity cap. If large projects are theoretically more cost effective due to economies of scale, the MTC for projects above 2 MW should be eliminated.

**Alternatively, the Commission Should Retain the Current VDER Project Size Cap**

Increasing the VDER project size cap is an action that could potentially trigger many long-term contracts. Taking this action at a time when SEIA is challenging the Commission’s authority to protect the consumer parties to those contracts is ill-advised. UIU recommends that the Commission retain the VDER project size cap until after the SEIA petition is resolved. While a pending petition for rehearing does not automatically stay or postpone the enforcement of the UBP-DERS Order, 23 the SEIA Petition challenges the Commission’s authority to issue the UBP-DERS Order. UIU disagrees with the arguments raised in the SEIA petition. However, if the Commission or a court accepts some of SEIA’s arguments and modifies the UBP-DERS Order, there may be less protections for both customers entering DER contracts and the general investments made into the DER market with ratepayer funds. As the Commission’s suggested timeline in the March VDER Order indicated, it is essential that strong regulation accompanies the implementation of the VDER compensation scheme. 24

UIU appreciates the opportunity to respond to the issues noticed for comment in Appendix A of the September VDER Order, and respectfully requests the Commission consider the recommendations presented herein.

Respectfully submitted,

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23 Petition for Rehearing Notice at 1-2 (“An application for rehearing shall not excuse any corporation or person from complying with or obeying any order or any requirement of any order of the Commission, or operate in any manner to stay or postpone the enforcement thereof except as the Commission may by order direct. Public Service Law §22.”).
24 March VDER Order at 142 (“Therefore, the Commission directs Staff to file within 30 days an updated whitepaper on DER oversight for public comment so that the Commission will be able to consider the DER oversight provisions at the same time as it acts on the implementation issues in this proceeding.”)