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September 1, 2015

CASE 14-M-0101 - Proceeding on Motion of the Commission
in Regard to Reforming the Energy Vision

Staff Letter Report to the Commission Regarding Distributed
Generation Emission Rules

To Chair Zibelman and Commissioners Acampora, Burman and Sayre:

In the Order Adopting Regulatory Policy Framework and Implementation Plan issued February 26, 2015 ("Framework Order"), the Commission established certain REV implementation requirements, including that Staff report to the Commission by September 1, 2015 regarding the status of proposed Department of Environmental Conservation ("DEC") distributed generation emission rules.¹ This letter constitutes the required September 1 report.

Background and DPS Staff efforts

In the Framework Order, the Commission observed that the encouragement of distributed generation, including combined heat

¹ Case 14-M-0101, *Reforming the Energy Vision*, Order Adopting Regulatory Policy Framework and Implementation Plan (issued February 26, 2015) pp. 44, 131.

and power, could have the potential side effect of increasing localized concentration of air emissions in urban areas. This issue was of concern to the environmental and environmental justice communities, and was flagged in the REV Environmental Impact Statement accepted by the Commission.²

In order to address this concern, the Commission directed Staff to cooperate with DEC in the development of the proposed DEC emission rules related to distributed generation, and to provide a status report to the Commission on this effort by September 1, 2015 both as to these rules and as to any recommendations for further action.

DEC has worked with stakeholders to develop proposed regulations to govern air emissions from distributed generation sources.³ As directed by the Commission, Staff has engaged in interagency cooperation with DEC in the development of draft rules (6 NYCRR Part 222). Part 222 remained under consideration by DEC, pending the issuance of the federal Clean Power Plan.⁴ Since the federal Clean Power Plan was issued on August 3, 2015, the potential impacts of Part 222 are being analyzed within the complete perspective of federal and state emission regulations.⁵

Staff is also engaged in discussions with key stakeholders including the City of New York, environmental, consumer, and environmental justice representatives, and Consolidated Edison Company of New York, Inc. ("Con Edison"). Issues that have been

² Notice of Completion of Final Generic Environmental Impact Statement (issued February 6, 2015).

³ New York State Department of Environmental Conservation, Regulatory Agenda January 2015, 6 NYCRR Part 222.

⁴ 40 CFR Part 60.

⁵ DEC Part 222 will only apply to existing facilities, not to new or newly modified ones, which are governed by EPA regulations.

discussed include the potential impact of Part 222 on existing demand response programs at both the wholesale and retail level, the impact of distributed energy resources on urban communities, and the proposed rule's interaction with other environmental regulations.

Status of the DEC rulemaking process

At this time, DEC is preparing the proposed rules for public notice and comment, considering any new information gained in stakeholder discussions. When DEC files the proposed Part 222 Rule in the State Register, Staff will update this report.

Respectfully submitted,

/S/

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Deputy for
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