

**NEW YORK STATE  
DEPARTMENT OF PUBLIC SERVICE**

**Staff's Proposed Guiding Principles for  
Revised Utility Codes of Conduct**

**Case 15-M-0501 In the Matter of a Review of Utility Codes of  
Conduct as Impacted by Reforming the Energy  
Vision**

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

In its Order Adopting Regulatory Policy Framework and Implementation Plan, issued February 26, 2015, the Commission, inter alia, presented a framework that would establish a distributed system platform (DSP) operator to facilitate the creation of new markets for distributed energy resources (DER), and to coordinate those DER resources when and where implemented. The Commission agreed with the recommendation of Department of Public Service Staff (Staff) that New York's existing electric distribution utilities are best suited to act as the DSP operator to administer the DSP functions. Such functions fall under three general categories: 1) integrated system planning, 2) grid operations, and 3) market operations.

In discussing Staff's recommendation that the utilities act as DSP operators, the Commission recognized that the issue of what entity should serve as the DSP administrator is a separate question from whether a utility should own DER and any mechanisms for preventing the potential exercise of market power under such an ownership arrangement. The Commission noted that DER ownership is one of the most contentious issues in the Reforming the Energy Vision proceeding.

Ultimately, the Commission decided that utility affiliates could own DER and utility DSP operators could only own DER under certain circumstances. In making such determination, the Commission noted that it generally did not favor utility ownership and that it was persuaded that unrestricted utility participation in DER markets presented a risk of undermining markets more than it enhanced the potential for accelerating market growth. Thus, the Commission authorized such utility ownership under four circumstances: where 1) procurement of DER has been solicited to meet a system need, and a utility has demonstrated that competitive alternatives proposed by non-utility parties are clearly inadequate or more costly than a traditional utility infrastructure; 2) a project consists of energy storage integrated into distribution system architecture; 3) a project will enable low or moderate income residential customers to benefit from DER where markets are not likely to satisfy the need; or 4) a project is being sponsored for demonstration purposes.

To address its concerns with such ownership, the Commission noted that codes of conduct by the utilities would be required, especially to prevent the possible misuse of inside information. Because, however, the Commission found that comments on codes of conduct were scarce it directed Staff to initiate a process to address and refine utility codes.<sup>1</sup> To

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<sup>1</sup> The individual affiliate transaction/code of conduct rules are:

- **Central Hudson:** Consolidated amended and restated settlement agreement as approved by the Commission on February 19, 1998 with modifications, and conditions and standards and codes of conduct as approved by the Commission on June 26, 2013 in the Order authorizing acquisition subject to conditions.

- **Con Edison:** Case 98-M-0961 - *Joint Petition of Consolidated Edison, Inc., Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. for Approval of a Certificate of Merger and Stock Acquisition*, Order Authorizing Merger, issued April 2, 1999, approving the Settlement Agreement filed March 8, 1999, at Appendix A, as amended in Case

date, Staff has met with the utilities and potential DER providers to discuss this issue. Based on those discussions and with written feedback received after such meetings, Staff proposes that the following guiding principles should be addressed in utility codes of conduct and also proposes that if the Commission so adopts the guiding principles, the utilities should, upon conforming their individual codes of conduct to the following, submit such to the Commission for review and

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13-E-0030, *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, et al*, Order Approving Electric, Gas and Steam Rate Plans in Accord with Joint Proposal, issued February 21, 2014, Appendix C -Joint Proposal at Appendix 26.

• **NYSEG/RG&E:** Case 12-M-0066 - New York State Electric & Gas Corporation, Rochester Gas and Electric Corporation, RGS Energy Group, Inc., Iberdrola USA Networks, Inc., Iberdrola USA, Inc., Petition for Approval of an Internal Reorganization Pursuant to Public Service Law §70 - Iberdrola USA Networks, NYSEG, and RG&E Compliance Filing, at Exhibit 1(a) (Standards Pertaining to Affiliates and the Provision of Information) (filed Feb. 5, 2014).

• **Niagara Mohawk Power Corporation d/b/a National Grid:** Cases 12-E-0201 and 12-G-0202, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Niagara Mohawk Power Corporation d/b/a National Grid for Electric Service and Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Niagara Mohawk Power Corporation d/b/a National Grid for Gas Service*, Order Approving Electric and Gas Rate Plans in Accord with Joint Proposal (issued March 15, 2013). See Joint Proposal, Appendix 7, pp. 10-17.

• **The Brooklyn Union Gas Company d/b/a National Grid NY and KeySpan Gas East Corporation d/b/a National Grid:** Cases 06-G-1185 and 06-G-1186, *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of The Brooklyn Union Gas Company d/b/a KeySpan Energy Delivery New York for Gas Service and Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island for Gas Service*, Order Adopting Gas Rate Plans for KeySpan Energy Delivery New York and KeySpan Energy Delivery Long Island (issued December 21, 2007). See Joint Proposal, Appendix 4, pp. 4-10.

• **O&R:** Case 98-M-0961 - *Joint Petition of Consolidated Edison, Inc., Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc. for Approval of a Certificate of Merger and Stock Acquisition*, Order Authorizing Merger, issued April 2, 1999, approving the Settlement Agreement filed March 8, 1999, at Appendices B & C.

approval. Such submission should include a copy of the codes and a narrative explaining how and where the code conforms to each of the following principles.

#### No preferential treatment

In some circumstances utilities could offer preferential treatment to their unregulated affiliates in managing the provision of DER. This is not limited to circumstances where a utility intentionally favors its affiliate, but also to where such treatment might be unintentional but still problematic, such as where the treatment results, for example from the ease or comfort of communication with an affiliate employee as opposed to an unknown third-party DER provider representative.

- The regulated utility will not provide preferential treatment to its affiliate(s).
- Specifically, there will not be preferential treatment regarding interconnections or dispatch for affiliates.

#### Sharing of information

Certain situations may arise where the sharing of additional information with affiliates may happen as a product of parent company communication platforms. In addition, information may be intentionally withheld from market participants or steered toward affiliates.

- The regulated utility will provide equal access of customer and system information to all market participants.
- The regulated utility will not disclosure information provided by other third parties to utility affiliate(s).

#### Independent functioning of distribution employees and employees engaged in DER or Value Added Service projects

Utility distribution employees could have information that should not be shared with regulated utility employees who work in DER procurement (even on a limited basis) or value added services. As it is difficult to determine the exact nature of these roles at this stage of the REV process, it is difficult to know the extent to which there should be limitations or restrictions on knowledge sharing. With the understanding that

the REV is evolving, initial restrictions should be considered that may need to be further revised.

- The regulated utility will provide training and education to its employees to ensure there is no inappropriate sharing of competitive information amongst the various internal departments.
- The regulated utility will consider the need for stronger independent functioning rules as the market develops.

### Transparency

Mechanisms should be established that facilitate transparency, especially with regard to what information might DER providers wish to have and how they may wish to receive such information to avoid any appearance of impropriety or inside information being used.

- An open DER procurement process such as competitive bidding should be considered to minimize any potential for, or appearance of, the misuse of inside information.

### Avoiding Market Power Conflicts

Where a utility affiliate is able to compete with unaffiliated providers, some provision must be in place to insure fairness in utility selection.

- If utility procurements involving an affiliate are allowed, an independent party must monitor the process to ensure that the selection is unbiased.

### Dispute Resolution

To be effective, codes need not just to be in place, but have some mechanism for insuring compliance and addressing any noncompliance issues that arise.

- Disputes regarding code of conduct issues will be addressed using the protocols being developed in Case 15-M-0180, "In the Matter of Regulation and Oversight of Distributed Energy Resource Providers and Products".

Parties should comment on: 1) whether existing utility codes of conduct already address the issues, in whole or in part, and how such provisions may be strengthened in light of the REV initiatives; 2) specific proposed language that could be used in utility codes to eliminate or minimize each of the issues identified; and 3) any other issues that are not listed above.