

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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

PROCEDURAL RULING

(Issued May 25, 2016)

SEAN MULLANY, Administrative Law Judge

At the May 10, 2016 technical conference, the parties were asked to present their recommendations, by May 17, 2016, regarding process to be followed in this case. Staff of the Department of Public Service (Staff) described two different approaches under active consideration. The first would involve the development of a Staff position paper based on filings made thus far, and filings made as of June 10, 2016. The Staff's position paper would then be subject to a notice and comment by the parties. Thereafter, Staff's position paper, along with all comments and other record materials, would be presented to the Commission in time to allow for a Commission decision before the end of 2016.

The second option would be an informal and collaborative process to develop, to the extent possible, joint recommendations for Commission action. Where agreement is not reached, the collaborative process would include a report describing the topics discussed in the collaborative, the positions taken, and the reasons therefore. After a notice and comment period pursuant to the State Administrative Procedures act, that report, along with any joint recommendations, would be presented to the Commission in time to allow for a Commission decision before the end of 2016.

At the May 10th technical conference, the parties were also invited to identify so-called "threshold" issues that, if decided quickly by the Commission, could enable greater progress

toward the resolution of other issues that are presented in this proceeding.

A number of parties timely filed comments and recommendations as of May 17, 2016. I have reviewed those filings, as well as the filings made as of April 18, 2016 in this case. Based upon that review, input from Department Staff, the need for a fair and transparent process, and a balancing of the various interests at stake, I have decided to employ an informal and collaborative process. The process will consist of meetings and conferences, on notice to all active parties, structured to promote the development of joint recommendations for Commission action. Parties will be encouraged to share information as appropriate to facilitate meaningful discussions and compromise to promote agreement to the greatest extent practicable.

Staff and/or consultants working with the Department of Public Service, will assist in facilitating meetings and conferences. I anticipate that progress may be made on certain "threshold" topics, and this may result in "interim" reports from the collaborative, which, after notice and comment, would be filed with the Commission with a view toward Commission decisions on discrete issues, or subsets of issues. (For example, it may be possible for the parties to reach meaningful agreement on issues relating to the "grandfathering" of certain facilities). All parties would have an opportunity to review and comment on any such reports before they are finalized.

Collaborative discussions will not constitute formal settlement negotiations, and, therefore, Rule 3.9 will not apply. In general, discussions among the parties, as well as any documents and records considered during this proceeding, would be non-confidential. However, by motion to me, any party

may request confidential treatment on a case-by case basis or the issuance of a protective order.

While collaborative meetings and conferences will be open to the public and observers will be welcome, actual participation will be limited to active parties. Moreover, given the number of active parties, the diversity interests at stake, the variety of issues and positions, and the Commission's stated goal of taking action before the end of 2016, each party will be obliged to identify an single representative to speak on its behalf at any given meeting or conference.¹ The person so designated shall be identified by that party at least two business days before each meeting or conference.² This will help ensure an orderly flow of communication, minimize the risks of confusion, and increase the likelihood of productive discussions. To the extent a party reasonably believes that a different individual can best represent its interests at a given meeting or conference, that party may, at the beginning of a given meeting or conference, designate a different representative to speak on that party's behalf during some or all of that meeting.

Parties should all be aware that I and other members of Staff will participate in discussions but will also be advising the Commission throughout the proceeding.

These procedures will govern at the next meeting in this case, which will be convened on Tuesday, June 14, 2016, in the Public Service Commission's offices, Three Empire State Plaza, Albany, New York, 19th Floor Board Room. The conference will begin at 10:30 a.m. It is intended that future conferences

¹ Attendees may observe, but not participate, via teleconference.

² There will be no limit, however, to the number of party representatives who may observe.

and meetings in this proceeding will be held in the Commission's offices in either Albany or New York City.

The principal purpose of the June 14th conference will be to address issues related to the development of an interim methodology for valuing and compensating DER. The parties will have an opportunity to discuss any "threshold issues" identified in the filings made as of May 17, 2106. In addition, the parties will have an opportunity to discuss a process that will be presented by staff for consideration of an interim methodology for valuing and compensating DER. An agenda for the June 14 conference will be issued prior to the conference.

Discussion of the proposals for the development of a long term methodology for valuing and compensating DER will be the subject of a conference that will be scheduled at a later date.

(SIGNED)

SEAN MULLANY