

Hon. Kathleen Burgess
Secretary to the Commission
NYS Public Service Commission
Empire State Plaza, Bldg 3
Albany, NY 12223-1350

March 30, 2015

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

Dear Secretary Burgess:

Pursuant to Section 3.7 of the New York State Public Service Commission's Rules of Practice and Procedure, Alliance for a Green Economy, Binghamton Regional Sustainability Coalition, The Center for Social Inclusion, Citizens' Environmental Coalition, Citizens for Local Power, and People United for Sustainable Housing (PUSH) Buffalo petition the Public Service Commission for rehearing and/or clarification of certain parts of the Commission's Order issued on February 26, 2015 in the Motion of the Commission in Regard to Reforming the Energy Vision (Case 14-M-0101).

Respectfully submitted,

/s/

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Program Director
Alliance for a Green Economy

/s/

Adam Flint
Binghamton Regional Sustainability Coalition

/s/

Anthony Giancattarino
Director of Policy and Strategy
The Center for Social Inclusion

/s/

Barbara Warren

Executive Director

Citizens' Environmental Coalition

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Jennifer Metzger and Jessica Barry

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Citizens for Local Power

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Clarke Gocker

People United for Sustainable Housing (PUSH) Buffalo

cc: Active parties (via e-mail)

NEW YORK STATE
PUBLIC SERVICE COMMISSION

CASE 14-M-0101:

Proceeding on Motion of the
Commission in Regard to Reforming the Energy Vision

Petition for Rehearing and/or Clarification

Submitted by Alliance for a Green Economy, Binghamton Regional Sustainability Coalition, The Center for Social Inclusion, Citizens' Environmental Coalition, Citizens for Local Power, and People United for Sustainable Housing (PUSH) Buffalo.

March 30, 2015

Introduction

On February 26, 2015, the Public Service Commission ("Commission") issued an "Order Adopting Regulatory Policy Framework and Implementation Plan"¹ ("Order") in the above referenced case. Submitted by Alliance for a Green Economy, Binghamton Regional Sustainability Coalition, The Center for Social Inclusion, Citizens' Environmental Coalition, Citizens for Local Power, and People United for Sustainable Housing (PUSH) Buffalo ("Petitioners") hereby petition the Commission for rehearing and/or clarification around certain elements of the Order, pursuant to Section 3.7 of the New York State Public Service Commission's Rules and Regulations.

Specifically, we request rehearing and/or clarity on the following items:

- (1) Utility ownership of distributed energy resources (DER) for moderate and low-income customers (as discussed on pages 68-70 of the Order);
- (2) Opportunities for participation by members of the public and public-interest stakeholders in Track 2.

¹ Public Service Commission (February 26, 2015) "Order Adopting Regulatory Policy Framework and Implementation Plan" <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={0B599D87-445B-4197-9815-24C27623A6A0}>

The petitioners are members of the Energy Democracy Working Group, a collaboration of grassroots and community-based organizations across New York who have been advocating for public participation, strong and holistic environmental protections, energy affordability, consumer safeguards, and racial and economic equity within the Reforming the Energy Vision (REV) proceeding.

In submitting this petition for rehearing and/or clarification, we continue to urge the Commission to conduct this proceeding in a way that is accessible and accountable to the public. The REV proceeding holds great potential to design a more participatory energy system, where New Yorkers gain control and ownership over their energy consumption and their energy production. These are goals we share with the Commission. Designing a participatory energy system, requires a participatory process. It is particularly important that those who will be most affected by any given policy proposal be consulted and provided the opportunity to participate in the development of that policy.

Therefore, we submit the following discussion of items for which we seek clarity and/or rehearing.

Discussion

1. Utility Ownership of Distributed Energy Resources (DER)

The Order established a general rule that “utility ownership of DER will not be allowed unless markets have had an opportunity to provide a service and have failed to do so in a cost-effective manner.”

The Petitioners support this general rule, but we seek a rehearing and/or clarification on one of the exceptions to the rule that the Commission set forth in the Order. Specifically, the Commission states:

The second exception will be where there does not appear to be a developing market for DER and the public interest warrants utility investment that will support such development. One segment that warrants this allowance is low or moderate income customers that can use DER to moderate their energy bills and take advantage of the REV market. Customer advocates have expressed concern that low and middle income customers will not be able to participate in REV benefits, for a variety of reasons including location, premises constraints, and access to capital. This potential is particularly acute in the case of rental customers that cannot control improvements to

premises. Where system benefits and/or substantial customer benefits can be achieved with DER projects, in areas that are not being served by markets, utilities will be able to propose programs to achieve them. With that objective in mind, we will instruct the Commission's Consumer Advocate staff to work with low income advocates, utilities and other interested stakeholders to develop these programs for introduction by utilities as part of ongoing REV development. Program details will be filed within DSIPs.

For brevity, we will refer to the above paragraph from here on out as "the Second Exception."

The Petitioners agree with the Commission that in cases where a developing market for DER does not appear, the public interest *may* warrant "utility **investment** that will **support** such development" (emphasis added). However, we find the above passage unclear in terms of what kind of investment will be allowed.

The issue is further muddied by a passage later in the Order (page 87) that discusses "steps to provide LMI [low and moderate income] customers a fair opportunity to benefit in REV markets":

Utilities will be allowed to partner with community groups and/or invest directly in distributed resource projects on premises of low and moderate income customers, to target system needs and enhance the participation of low and moderate income customers.

We seek clarification as to whether "investment" in the above excerpts means "ownership" or whether it means providing access to financing or other support to allow low-income and moderate-income people to own distributed energy resources themselves.

If the Commission meant "ownership" in the above referenced paragraphs, we seek clarification as to whether utilities will be required to partner with community groups before moving forward with such projects.

Additionally, if "ownership" was meant, we request that the Commission reconsider this exception for the following reasons:

- 1. It is premature to assume that DER markets will not develop for low and moderate income people or that utility ownership is the best way to address this lack of development when/if it occurs.** The Commission is correct that there are currently substantial barriers to distributed energy resource ownership by low and moderate income people. We appreciate the Commission's attention to the concerns raised by

consumer advocates (including many members of the Energy Democracy Working Group) over whether low and moderate income people will be able to access the benefits offered by the DER ownership.

However, the REV proceeding is meant to change the status quo and reduce barriers that are impeding the development of distributed energy resources. Though “low and moderate income” is not defined in the Order, we assume this to at least encompass New Yorkers who live below 60% of Area Median Income and New Yorkers who live below 100% of Area Median Income (approximately 20% and 30% respectively). We hope the Commission does not mean to write off the approximately 50% of New Yorkers who are low or moderate income as unreachable by the new REV markets.

Numerous proposals have been submitted or are forthcoming to address the gaps in access to the benefits of energy efficiency and renewable energy for low-income people and low-income communities. These include NYSERDA’s Clean Energy Fund² proposal and the comments that will be submitted in response, comments submitted in the Proceeding on Energy Affordability for Low Income Utility Customers³, comments submitted in the Community Choice Aggregation proceeding⁴, and forthcoming comments to be submitted in the Community Net Metering Proceeding.⁵

Until all of these proceedings are taken together as a whole and until the rules for REV markets are developed, we believe the Second Exception is premature. We request that this section of the Order be stayed until the outcomes of REV Track 2 and other related proceedings are clearer.

- 2. Low and moderate income New Yorkers represent a substantial portion of the state’s population and a large portion of the electricity market.** This raises the possibility that the Second Exception is not a narrow exception but will represent a significant portion of the market. As discussed above, it is unclear in the Order what is meant by low and moderate income, but we take this to cover about 50% of New Yorkers, give or take, depending on a definition of moderate income. In issuing the general rule that utilities

² New York Public Service Commission Case 14-00549 – Proceeding on Motion of the Commission to Consider a Clean Energy Fund

³ New York Public Service Commission Case 14-M-0565 – Proceeding on Motion of the Commission to Examine Programs to Address Energy Affordability for Low Income Utility Customers

⁴ New York Public Service Commission Case 14-M-0224 – In the Matter of Enabling Community Choice Aggregation Programs

⁵ New York Public Service Commission Case 15-E-0082 – Proceeding on Motion of the Commission as to the Policies, Requirements and Conditions For Implementing a Community Net Metering Program

should not own DER, the Commission sought to address concerns over excess market power being exercised by investor-owned utility companies, in particular because of their newly designated role as Distributed System Platform Providers. However, allowing utilities to own DER in instances when they claim to be serving low and moderate income customers would give utilities substantial ownership opportunities and substantial potential to abuse market power.

3. The Staff Straw Proposal issued on August 22, 2014⁶, did not propose utility ownership of DER as an option to address barriers to access to REV ownership for low and moderate income people. As a result, the record does not support the Second Exception.

The Staff Straw Proposal suggested scenarios under which utilities should be allowed to own DER, and these were the subject of intense party comments. The idea that utilities should be allowed to own DER in order to fill a market gap for low and moderate income people was not one of the scenarios proposed in the Staff Straw Proposal. Further, the February 26 Order does not cite any public interest parties as having suggested this outcome. The Order acknowledges that “DER ownership is one of the most contentious issues in the REV proceeding.” Given that this is such a contentious issue, the Commission should allow discussion and comment from parties and the public before moving forward with what is essentially a new proposal on DER ownership.

As justification for the ruling on this exception, the Commission cites general concerns raised by consumer advocates over whether REV markets will serve low and moderate income people. However, in discussing party comments, the Order does not note any consumer advocates as having promoted this outcome. Furthermore, it is apparent that the Commission did not develop this proposal in consultation with low-income communities or organizations that work in those communities.

The Order says the Commissioners “will instruct the Commission’s Consumer Advocate staff to work with low income advocates, utilities and other interested stakeholders to develop these programs for introduction by utilities as part of ongoing REV development.” We petition the Commission to instruct the Consumer Advocate staff to work with low and moderate income stakeholders to determine whether this policy should move forward at all before deciding how

⁶ State of New York Department of Public Service (August 22, 2014) "Developing the REV Market in New York: DPS Staff Straw Proposal on Track One Issues"

<http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={CA26764A-09C8-46BF-9CF6-F5215F63EF62}>

it should be implemented. We do not preclude the possibility that the outcome promoted in the REV Order will truly best serve the interests of low and moderate income, however we do not see a record to support that outcome at this time.

Section 3.7(b) of 16 NYCRR states that a rehearing may be sought when the Commission has “committed an error of law or fact” or when “new circumstances warrant a different determination.” We believe that both an error of law and new circumstances warrant a rehearing. As discussed above, multiple interrelated proceedings are taking up the issue of the barriers that low and moderate income people face in accessing the benefits of distributed energy resources. New information has been, and will be submitted in those proceedings which may very well warrant a different determination. Additionally, the REV markets – which the Order seems to prematurely determine will not serve low and moderate income people – have yet to be developed. Therefore, we request that the Commission stay its decision on the Second Exception until the record is more complete in the other interrelated proceedings and until REV markets are better defined.

Additionally, the idea that utilities should be allowed to own DER through the Second Exception is not supported by the record in the case. It was not proposed in the Staff Straw Proposal. And the parties and the public, as a result, did not thoroughly discuss the possibility in their filings and comments. Thus, the process was incomplete and in error. We request that prior to implementing this policy, the Commission specifically engage, consult, and work with low and moderate income peoples, low- and moderate-income community based organizations, and consumer advocates on how best to ensure that the benefits of distributed energy resources are accessible to all New Yorkers.

2. Opportunities for participation by members of the public and public-interest stakeholders in Track 2.

On February 25, 2015, the Energy Democracy Working Group submitted a letter signed by 93 organizations, small businesses and elected officials to Commission Chair Audrey Zibelman calling on the Commission to ensure robust opportunities for public participation as REV moves to Track 2. The letter is attached to this petition for the record.

We appreciate the Commission for taking an important step for public participation by holding the public statement hearings in January and February 2015, and we urge the Commission to go further. The Order refers extensively to the public statement hearings and the public comments as informative, yet much of the passionate testimony is lost in the Order’s outcomes. As important as public statement hearings are, it is even more important that the Commission

proactively seek out, engage, and collaborate with unrepresented and underrepresented constituencies and include their representatives in the actual development of policy proposals that later become the topic of public comment periods and public statement hearings.

The Energy Democracy Working Group has been calling on the Public Service Commission to do this since October of 2014.⁷ Yet the Track 2 process is more complex and less accessible to these groups than Track 1, and the Order lacks specific information about how this will be addressed.

We request that the Commission clarify or rehear several items related to the REV process discussed in the Order, so as to ensure due process and fair access to this proceeding by all parties and participation by the public:

1. Closed Working Groups Without Representation of All Sectors
2. Availability of Intervenor Funds
3. Public Statement Hearing and Public Comments

Closed Working Groups Without Representation of All Sectors

On pages 40-41 of the REV Order, the Commission states: "Staff has convened a stakeholder effort (Market Design and Platform Technology or MDPT) to identify the necessary functional and business architecture for the DSP and DSP markets, and we direct Staff to continue this process."

On February 3, 2015, the Energy Democracy Working Group requested to have representation on the MDPT.⁸ On February 20, 2015, the Commission issued a "letter ruling" listing the membership of the MDPT as chosen by Staff and co-leads.⁹ The MDPT does not include representatives of the Energy Democracy Working Group or any representatives from consumer advocacy organizations, grassroots environmental, or community-based organizations. It is, however, heavily representative of utility companies and industry groups.

⁷ Alliance for a Green Economy (October 24, 2014) "Reply Comments on Track 1 Staff Straw Proposal" <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={75BA7003-4E88-4001-A82A-5B12DBC03E75}>

⁸ Energy Democracy Working Group (February 3, 2015) "Letter Regarding Market Design and Platform Technology Working Groups" <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={EE27468B-8153-43F3-A835-1F4986ED987A}>

⁹ Administrative Law Judge Julia Smead Bielawski (February 20, 2015) "REV Market Design and Platform Technology Group Participants -- Case 14-M-0101" <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={29F3F3B3-4EE8-4BA0-899D-2C80625D3866}>

The only reasons given for preventing parties from joining the MDPT is that the working groups should be kept small for efficiency and that they will require a high time commitment, yet to our knowledge staff did not ask interested groups whether they had the time required before leaving them out.

We do not know of a legal basis by which the Commission can prevent parties from participating in or having sector representation in “stakeholder efforts” convened by the Commission. Ratepayers are a critical sector of the market, and their interests are diverse. Many have different end state visions than the traditional market advocates who dominate the MDPT. Yet ratepayer representatives have not been given the opportunity to select representation on the MDPT to make sure all perspectives have input into REV market design.

In previous large policy cases, smaller working groups and task forces were formed to make it easier for discussions to take place, and representation happened through self-selection and guidance of Administrative Law Judges. Yet in this case, individual people were invited by the three lead groups, and other parties have not even been permitted to attend as silent observers. Neither the Public Service Law, nor the regulations permit such closed-door invitation-only meetings of a selected group of parties like the MDPT. The represents hugely unfair influence and access by some parties above others.

Therefore, we believe this is an error of law and a violation of due process and we petition the Commission to reconsider how staff will engage stakeholders in the various consultative and collaborative efforts that will be needed throughout the remainder of the REV process, including the MDPT. Consumer and ratepayer advocates must be invited and accommodated to participate in a meaningful way in discussions open to all. It is incumbent on the Commission to develop a process that is reasonably accessible to all parties and all interests, particularly the interests of ratepayers.

Intervenor Funding

We also note that while multiple parties and members of the public requested that the Commission make intervenor funding available for public interest groups to participate in the REV proceeding, the Order did not discuss this possibility.

We urge the Commission to take up this matter as soon as possible. The rapid pace and complexity of the REV process requires an incredible amount of time and expertise on behalf of all parties. Groups representing the public interest, particularly those representing marginalized

communities, are locked out of or disadvantaged in this process due to a huge inequities of available resources. We understand that the Commission does not traditionally grant intervenor funds in generic proceedings like REV, but we assert that the Commission does have the authority to do so. In this case, it would be appropriate and beneficial to the public interest to do so.

Public Hearings and Public Comments

Finally, we note that the Order did not discuss further opportunities for public statement hearings or public comments as the REV proceeds. The previous public comment periods were not well advertised, and the previous public statement hearings were announced with very short notice. This prevented many interested and otherwise engaged members of the public from participating. In the narrative of the Order, the Commission established that public input is an important part of the REV process and had a significant impact on the Order. Given the importance of public participation in REV, we urge the Commission to amend the REV timeline issued on pages 131-132 of the Order to include public comment periods and public statement hearings to discuss the issues at the heard of REV in 2015.

Conclusion

While seeking to pay attention to low and moderate income residents, the Commission continues to view low and moderate income households as merely consumers of energy while providing the opportunity for more affluent residents to be more active participants and owners. We know that distributed energy resources, if truly developed by and for low and moderate income people, can create jobs, lower bills, and build wealth through ownership and investment in these energy systems. We also know that low and moderate income communities are rich in assets that can be utilized for DER development. This is why we have been urging the Commission to ensure and prioritize DER development in these communities and to create policies that put ownership of these resources into the hands of low and moderate income residents and their communities.

Turning to utilities to fill gaps in this development is likely short sighted because it will reinforce the role of low and moderate income people as consumers only. Therefore, we urge the PSC to pursue more strategic resource and capacity investments into these communities that will create the pathways for participation and ownership in the new REV markets so that low and moderate income households have a fair opportunity to benefit from DER.

We further urge the Commission to ensure that low and moderate income people and the organizations that engage them have full and fair access to the REV proceeding.

For the reasons discussed above, we request clarification and/or rehearing on the portion of the Order that creates an exception for utility ownership in cases where utilities would serve low and moderate income people. We further request clarification and/or rehearing the REV Track 2 process to ensure equal access to the important stakeholder efforts, access to resources to participate in REV, and access to avenues for public input through comment periods and public statement hearings.

Sincerely,

/s/

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Binghamton Regional Sustainability Coalition

/s/

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Audrey Zibelman
Chair
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February 25, 2015

Dear Ms. Zibelman:

We, the undersigned 93 organizations and elected officials, appreciate the Public Service Commission for holding eight public hearings across New York regarding Track One of the Reforming the Energy Vision (REV) Proceeding. We are especially appreciative that you delayed the first order on the REV proceeding to give the public more time to understand the proceeding and to weigh in on the vision. In anticipation of the coming Track 1 decisions and the process around Track 2, we write to make further suggestions for improving avenues for public participation in REV.

The Public Service Commission's decision to provide information sessions and public hearings throughout the state was the first step towards a more accountable, transparent, and participatory process. These hearings served as an important opportunity for New Yorkers to learn about REV and to express their ideas, stories, and recommendations in the hopes of shaping the PSC's new energy vision.

Nearly a thousand New Yorkers attended the REV public hearings across the state and thousands more submitted written comments. We are impressed by the strong interest that the public has in the REV and New York's energy future. This signifies that many deeply care about New York's plans to address climate change, build a strong economy, and reshape the energy system. **New Yorkers are hungry to play a pivotal role in shaping the energy future. We strongly encourage the Commission to find additional ways for the public to influence the energy vision.**

Residents across the state voiced multiple concerns with the process, two of which we wish to highlight and expand upon in this letter:

- 1. Create more intentional efforts for community engagement, particularly among climate vulnerable and environmental justice communities;**
- 2. Design and delegate the task of Distributed System Platform (DSP) in a way that will ensure communities can be planners, decision-makers, and owners in the new energy system.**

1. Public Process

We acknowledge the tight timeline that the Public Service Commission faces. An aging infrastructure requiring thirty billion dollars in investments, a changing climate that threatens New York's communities, and upcoming utility rate cases. These factors, among others, require immediate and bold action – all of which the PSC is pursuing. But addressing these challenges is a bigger task than one institution or industry can accomplish. It requires all of us. If the REV fails to be inclusive in its planning and design from the start, the efforts and actions will not be enough to solve New York's challenges.

We fully know that design and planning takes time, especially the more complex and open the process is. Yet, failing to involve New Yorkers in the planning efforts, particularly those who have been on the frontlines of climate change, burdened by our state's traditional dirty energy system, or have struggled to pay their energy bills means the state's policies will fail to reflect or respond to the nuanced challenges on the ground. **Good policy making requires that those most impacted are at the center of the decision-making process.** Therefore, we urge the Commission to create increased opportunities for communities to give insight and weight to the PSC's ideas and goals. Without their voice we will design and plan an energy system that will continue to make marginal those who are not already at the table.

We urge you to rework the process to ensure that the planning efforts truly incorporate and respond to the needs on the ground. As Track 2 begins in earnest, the process by which the public can participate in the important issues to be discussed remains unclear. In spite of the critical importance of the details to be discussed in Track 2, so far it remains even more inaccessible than Track 1. The cancellation of stakeholder roundtables last fall, followed by the creation of hand-picked, industry-heavy working groups this winter, added to the lack of clarity around timeline are all leading to confusion about how people can engage in the work. The Track 2 process requires clarity and robust participation by a diversity of stakeholders.

Additionally, we urge you to begin planning now for the next round of public information sessions and public hearings as the next set of decisions gets discussed and debated.

The Energy Democracy Working Group stands still willing to partner with the Commission and the Department of Public Service staff to design and implement a public engagement process.

2. The Nature of the DSP

At the public hearings there was a resounding echo chamber of alarm regarding the staff straw proposal recommendation that incumbent utilities control the DSP. As we wrote to you last year, "The DSP would provide unprecedented new roles and responsibilities for the investor-owned utilities, businesses that have little accountability to the public and that have historically stood in the way of progress toward the state's environmental and affordability goals."

We continue to believe that there needs to be more time, reflection, and discussion around who controls the DSP and what role the incumbent utilities will play in planning and implementing the REV. We do not discount their roles in the energy system, but we do have concerns with

investor-owned corporations shaping and implanting the energy plans for the state. **The DSP determines the public marketplace for distributed renewables therefore it should not be decided by a closed-door industry whose bottom-line is making profit. These decisions should be accountable to the public and must keep the public's best interest as the bottom line.**

The recommendation for a publicly accountable entity to serve as the DSP instead of investor-owned utility companies was reiterated by hundreds of New Yorkers at the public hearings and in written comments. We hope the forthcoming ruling on Track 1 will reflect that common concern.

We urge the PSC to defer the DSP decision so PSC staff can do due diligence in working with stakeholders and community to flesh out a publicly controlled DSP. This means the PSC should put forth clear and distinctive roles that utilities, energy service companies, other businesses, municipalities and community organizations will play in how energy efficiency and renewable energy programs are designed and implemented. We firmly believe that the solutions should be put into community's hands first as they have the practical application for ensuring its success. A plan without community-focused solutions could work in theory, but practically speaking we will fail to ensure inclusion, equity, and full participation needed to meet the PSC's energy goals.

Sincerely,

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