January 25th, 2016

Via Electronic Filing

TO:
Kathleen H. Burgess, Secretary
New York State Public Service Commission
Empire State Plaza Agency Building 3
Albany, NY 12223-1350

FROM:
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RE: Case 15-E-0407 – Comments on Petition for Rehearing and Clarifications of Order Establishing Interim Ceilings on the Interconnection of Net Metered Generation.

Dear Secretary Burgess,

Please find comments from the Alliance for Clean Energy New York, New York Solar Energy Industries Association, Solar Energy Industries Association, The Alliance for Solar Choice and Vote Solar on the Petition for Rehearing filed by Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation in the above referenced proceeding.

Sincerely,
/s/ Sean Garren

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STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 15-E-0407 Petition of Orange and Rockland Utilities, Inc.
For Relief Regarding Its Obligation to Purchase Net Metered
Generation Under Public Service Law §66-j.

COMMENTS OF THE SOLAR PARTIES ON THE PETION FOR REHEARING OF THE JOINT UTILITIES

On November 16, 2015, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation ("Joint Utilities") filed a petition for rehearing and clarification of the New York State Public Service Commission ("Commission") order establishing interim ceilings on the interconnection of net metered generation. This was in response to the Commission order on October 16, 2015 that temporarily removed caps on the interconnection of net metered generation.

The Alliance for Clean Energy New York, New York Solar Energy Industries Association, Solar Energy Industries Association, The Alliance for Solar Choice and Vote Solar ("Solar Parties") commend the Commission for recognizing the critical need to maintain the growth of distributed renewable energy generation and avoid market disruption from unsteady net metering policy in New York. We believe it is critical to continue to allow interconnection of net metered facilities and assure customers of the consistent policy environment they can expect for their investments as the Reforming the Energy Vision (REV) proceeding continues to move forward.

The Solar Parties represent hundreds of businesses, customers and stakeholders involved with and supportive of the development of New York's clean energy economy. The Solar Parties wish to provide a clear voice in support of a strong distributed renewable energy market.

The comments offered here by the Solar Parties respond to the Joint Utilities' assertion that the Commission committed errors of fact and law in its October 16, 2015 Order (the Order) to increase the net metering (NEM) caps. . For the foregoing reasons, the Commission acted properly in its October 16, 2015 order and the Joint Utilities petition for rehearing should be denied.

I. JOINT UTILITIES' NOTICE ARGUMENT

The Joint Utilities claim that they had inadequate notice of this Order.[1] This is based on the argument that the filing made by Orange and Rockland Utilities, Inc. (O&R) on July 14, 2015 was not a petition.[2] The case-filed letter from Department of Public Service ("Department") Deputy Scott Weiner, dated July 31, 2015 in response to O&R's petition, concludes to the contrary.[3] Additionally, the July 15 O&R petition clearly went beyond notifying the Commission that O&R had reached its NEM cap, and requested formal changes in its tariffs. Tariff change proposals of this type are regularly treated as petitions. Additionally, despite Scott Weiner's letter, no mention of this alleged error was raised by the Joint Utilities until the Petition for Rehearing.

[1] JU Petition for Rehearing at 2
[2] Id.
[3] *See* Letter from Scott Weiner in Response to July 13, 2015 Filing (July 31, 2015)

The Joint Utilities also argue that the Commission's State Administrative Procedure Act (SAPA) notice of the July 15 O&R petition asking for radical rate design changes was inadequate.[4] Parties are generally provided adequate legal notice through SAPA procedures and there is no reason to believe that the notice required by the SAPA would not be satisfactory here. Further, even if the notice was somehow inadequate for the other utilities, the Joint Utilities cannot complain they had no notice of a possible change in rates for net metered generation, because that is exactly what O&R asked for in its petition.[5] In fact, the SAPA notice clearly states O&R's request for the Commission to consider changes to net metering and that the Commission's decision on the matter may apply to the Joint Utilities.[6] Additionally, the Commission has repeatedly signaled in its orders regarding the net metering caps that it expects the Joint Utilities to continue accepting applications even if the caps are hit, and that it will raise the caps as necessary to maintain market momentum.[7]

Therefore, the Joint Utilities had sufficient notice of the NEM cap increase and the Commission did not commit an error of law.

II. JOINT UTILITIES ARGUE BASIS FOR DECISION

The Joint Utilities argue that the Commission order disposing of the O&R petition was based on a cursory review. However, the O&R petition itself contained no evidence or estimates of damages being suffered by the public beyond the bald allegation of allegedly unfair revenue shifting under existing tariffs.[8] Thus, the Commission acted properly in the absence of substantiated evidence in the petition, and the error is not in the absence of a Commission analysis, but the absence of any evidence submitted by O&R with its petition, or the Joint Utilities during the comment period.

Further, the Petition for Rehearing is devoid of any further information that would justify the Commission reaching any different decision on immediately amending the net metered generation tariffs than it has reached in numerous prior orders. The Petition for Rehearing contains no evidence of the magnitude of costs allegedly unfairly shifted to other ratepayers.

Should the Joint Utilities wish to submit evidence on the value of distributed energy resources, the core issue in determining both the magnitude and direction of any allegedly inequitable shifting of costs, they should be directed to the ongoing REV proceedings on this very subject. Specifically, Case 15-E-0751, In the Matter of the Value of Distributed Energy Resources, is currently soliciting comments and proposals on this issue.

Therefore, the Joint Utilities have failed to show an error of fact or law by the Commission.

III. JOINT UTILITIES ARGUE TIME PERIOD OF WAIVER

The Joint Utilities claim that the order establishing a waiver from caps on the interconnection of net metered generation is established for an undefined period of time, which the Joint Utilities argue is outside the Commission's authority under PSL-66(j).[9] Contrary to this claim, the Commission determined that the public would not be served by making tariff changes with regard

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[4] Notice of Proposed Rulemaking, NYS Register, August 5, 2015 (I.D. No. PSC-31-15-0009-P)
[5] Id.
[6] Id.
[7] *See* Order Raising Net Metering Caps, Requiring Tariff Revisions, Making Other Findings, and Establishing Further Procedures at 11 (December 15, 2014)
[8] Joint Utilities Petition for Rehearing at 2
[9] Id. at 2

to net metered generation before it concluded a full examination of the costs and benefits of a more distributed electrical system, which is taking place in Case 15-E-0751. This Case has a deadline of December 31, 2016, which is the specific deadline for the waiver ordered by the Commission. In short, the Joint Utilities have failed to show the Commission acted outside of its statutory authority to amend the NEM caps and thus there is no error of law.

IV. JOINT UTILITIES ARGUE APPLICABILITY OF PROSPECTIVE TARIFF CHANGES

The Joint Utilities claim that net metering projects interconnected in the future should be subject to changes in the net metering tariff during the interim period.[10] Fundamentally changing the economics of a customer's investment in distributed generation is contrary to the principle of gradualism, a foundational principle in rate making and in REV, the sanctity of contracts, and will undermine confidence in the consistency of New York State energy regulation. Customers invest in net metered generation for many reasons, but the expectation of credits for the energy they generate at some reasonable level is a cornerstone of most customers' decisions. The Commission should not change that crediting level and/or mechanism after a customer has made that investment decision.

In addition, if the Commission were to change the net metering tariff as it applies to existing net metered customers, it would signal to customers and investors that they cannot base investment decisions on the current policies in place. When those policies revolve around something as fundamental to the economics of a project as the crediting level and mechanism, inconsistency makes those investment decisions significantly less viable. The Commission should deny the Joint Utilities' request to change existing customers' net metering tariffs and signal that they will provide a reasonably consistent regulatory landscape, including denying changes to the net metering tariffs as they apply to existing projects, for the life of all projects interconnecting under the net metering tariff.

V. CONCLUSION

The Solar Parties are sincerely grateful for the opportunity to provide input as the Commission responds to the Joint Utilities' Petition for Rehearing. The Solar Parties do not believe the Commission committed an error of fact or law in its Order, and urge the Commission to deny rehearing on this matter. Additionally, the Solar Parties urge the Commission to protect the investments of ratepayers and preserve grandfathering for existing solar customers.

Respectfully submitted,

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[10] Id. at 3

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