

September 6, 2016

**VIA ELECTRONIC FILING**

Hon. Kathleen H. Burgess  
Secretary  
New York State Public Service Commission  
Three Empire Plaza  
Albany, New York 12223-1350

Re: Case 16-M-0395 – In the Matter of New York Power Authority Customer Opt-In to Clean Energy Programs  
Case 15-M-0252 – In the Matter of Utility Energy Efficiency Programs  
Case 14-M-0094 – Proceeding on Motion of the Commission to Consider a Clean Energy Fund

Dear Secretary Burgess:

The City of New York hereby submits the attached *Initial Comments of the City of New York* pursuant to the Notice issued by the New York State Public Service Commission on July 12, 2016 in the above-referenced proceedings. Please contact me with any questions.

Respectfully submitted,

COUCH WHITE, LLP

*Justin J. Fung*

Justin J. Fung

JJF/KML

Attachment

cc: All active parties (via e-mail)

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

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**In the Matter of New York Power Authority  
Customer Opt-In to Clean Energy Programs**

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**Case 16-M-0395**

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**In the Matter of Utility Energy Efficiency Programs**

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**Case 15-M-0252**

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**Proceeding on Motion of the Commission to  
Consider a Clean Energy Fund**

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**Case 14-M-0094**

**INITIAL COMMENTS OF THE CITY OF NEW YORK**

**Dated: September 6, 2016**

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STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

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In the Matter of New York Power Authority Customer  
Opt-In to Clean Energy Programs

Case 16-M-0395

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**PRELIMINARY STATEMENT**

The City of New York (“City”) strongly supports increasing deployment of renewable resources and energy efficiency measures to reduce greenhouse gas and other harmful air emissions. The City leads by example, undertaking a panoply of projects each year to reduce its energy consumption and rely more heavily on carbon-free sources of energy.

The City’s effort can be enhanced if it has the opportunity to participate in programs supported by the Clean Energy Fund (“CEF”) and Consolidated Edison Company of New York, Inc.’s (“Con Edison”) Energy Efficiency Transition Implementation Plan (“ETIP”). Through access to the CEF and ETIP funding, the City may be able to leverage its own funds and expand its energy efficiency-related efforts.

Accordingly, the City conceptually supports the proposal of the Joint Utilities<sup>1</sup> to create a mechanism for New York Power Authority (“NYPA”) customers to voluntarily opt-in to paying CEF and ETIP surcharges and be eligible to participate in clean energy programs sponsored by the

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<sup>1</sup> The Joint Utilities are Central Hudson Gas & Electric Corporation, Con Edison, Niagara Mohawk Power Corporation d/b/a National Grid, and Orange and Rockland Utilities, Inc.

New York State Energy Research and Development Authority (“NYSERDA”) and the utilities, respectively.<sup>2</sup> As to the details of the Proposal, the City offers the following comments and recommendations.

### **BACKGROUND**

Pursuant to long-standing precedent established by the Public Service Commission (“Commission”), NYPA municipal customers were exempt from paying the System Benefits Charge (“SBC”), Renewable Portfolio Standard (“RPS”), and Energy Efficiency Portfolio Standard (“EEPS”) surcharges. Although NYPA customers did not participate in programs funded by these surcharges, they have engaged in separate energy efficiency, system efficiency, and renewable resource projects using their own funds.<sup>3</sup> For example, the City installed over 5 MW of solar capacity on City facilities during its latest fiscal year, and it has completed over 100 energy and thermal efficiency projects at City facilities in each of the past two years. While such efforts have been successful, the City believes there are opportunities for greater successes if the City and other NYPA customers are able to access the CEF and ETIP funds and the incentives and support made available to other energy consumers.

On January 21, 2016, the Commission issued an Order establishing the CEF, a program and investment framework that would consolidate the SBC, RPS and EEPS surcharges into a single

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<sup>2</sup> Case 14-M-0094, Establishment of a Clean Energy Fund, Joint Utilities Clean Energy Fund Opt-In Proposal – Corrected (filed July 7, 2016) (“Proposal”). On June 30, 2016, New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation filed joint comments supporting the Proposal with one modification not relevant to the City.

<sup>3</sup> The City pays a gas SBC charge on usage of over 30 million therms each year, but those payments do not allow it to participate in electric SBC programs.

fund for the State’s energy programs.<sup>4</sup> In the CEF Order, the Commission rejected a proposal for the CEF to operate “statewide” (*i.e.* include NYPA customers) but instead required the major New York utilities to develop and file a proposal whereby NYPA customers could voluntarily opt-in to paying the CEF and ETIP surcharges and participate in NYSERDA’s and the utilities’ clean energy and energy efficiency programs. The Commission stated that the proposal should include: (i) rules that are uniform across the State; (2) an opt-in that is customer-based, rather than meter-based; (iii) a minimum opt-in period; and (iv) rules that protect against the use of opt-in programs to immediately reduce surcharges paid.

In pertinent part, the Joint Utilities recommend that: (i) NYPA customers be permitted a one-time election to opt-in to the CEF and ETIP programs; (ii) the opt-in be on a per-building or per-premises basis; (iii) opt-in customers cannot opt-out; (iv) a certification be included on the CEF or ETIP program application form that would provide for enrollment if a NYPA customer’s building or premises is selected for an incentive; (v) NYPA manage the opt-in process and transfer a list of its relevant customer accounts to the utilities for billing purposes; and (vi) NYPA customers be given the opportunity to opt-in twice a year.

### **COMMENTS**

The Proposal would allow the City to take advantage of energy program incentives to further its and the State’s concurrent energy policy goals. The City sees this Proposal as a positive development, and it supports the Proposal subject to the following recommendations and clarifications. First, the Commission should allow NYPA customers to opt-in on a per-building

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<sup>4</sup> Case 14-M-0094, Establishment of a Clean Energy Fund, Order Authorizing the Clean Energy Fund Framework (issued January 21, 2016) (“CEF Order”) at 63.

or per-premises basis. Second, the Proposal is not clear whether a NYPA customer would automatically be enrolled into the opt-in program when it is selected for an incentive, or whether the customer would have the opportunity to first review the incentive amount and accept it. The Commission should clarify that NYPA customers will have an opportunity to review and accept an incentive before being enrolled in the CEF and ETIP programs. Third, NYPA and the utilities should closely coordinate billing and ensure that the opt-in mechanism is electronically integrated into the utility and NYPA billing systems at an account level as soon as practicable. Fourth, the Proposal is unclear about whether there will be a specific opt-in schedule for different NYPA customers, the administrative burdens about which the Joint Utilities expressed concern. Clarity on this point is needed.

#### **POINT I**

#### **THE COMMISSION SHOULD ADOPT THE PROPOSAL AND ALLOW NYPA CUSTOMERS TO OPT-IN ON A BUILDING OR PREMISES BASIS**

The opt-in mechanism as set forth in the Proposal is meritorious and should be approved by the Commission. The City previously has submitted comments to the Commission recommending that NYPA municipal customers be able to opt-in to paying SBC/RPS/EEPS surcharges and being able to benefit accordingly.<sup>5</sup> The City asserted that allowing NYPA customers to participate in these programs would increase energy efficiency and renewable resource deployment and allow NYPA customers to pursue clean energy and energy efficiency projects that otherwise might not be economically viable.

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<sup>5</sup> See, e.g., Cases 10-M-0457 *et al.*, In the Matter of the System Benefits Charge IV, Comments of the City of New York (filed August 8, 2014).

The Proposal is in accord with the City's position and appropriately offers NYPA customers an opportunity to increase their level of participation in the State's clean energy and energy efficiency initiatives, and it helps to advance multiple City and State public policies. As discussed in *One New York: The Plan for a Strong and Just City*, Mayor Bill de Blasio's comprehensive sustainability blueprint to reduce greenhouse gas emissions, improve building energy efficiency, and pursue numerous other energy and non-energy-related goals, the City is aiming to reduce emissions from energy used in buildings by 30 percent from a 2005 baseline and reduce emissions by 35 percent in City-owned buildings by 2025.<sup>6</sup> These measures are designed to achieve Mayor de Blasio's plan to reduce the City's greenhouse gas emissions by 80 percent by 2050.<sup>7</sup> If the Proposal is adopted, it likely would enable the City to accelerate the development and implementation of projects intended to achieve these important policy goals.

The City and other NYPA customers have thousands of electric accounts serving large public and governmental buildings, schools, libraries and cultural institutions. Some of these locations may provide strategic opportunities for renewable and/or energy efficiency projects to be leveraged and expanded to meet joint State and City goals. Allowing these entities access to CEF and ETIP funding is likely to help the State meet its new CES goals, including the energy efficiency targets set forth therein.<sup>8</sup>

The City agrees with the Joint Utilities that the opt-in should be on a per-building or per-premises basis. As correctly noted in the Proposal, requiring that all locations of a NYPA customer

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<sup>6</sup> *One New York: The Plan for a Strong and Just City* (issued April 2015) at 174, available at <http://www.nyc.gov/html/onenyc/downloads/pdf/publications/OneNYC.pdf>.

<sup>7</sup> *Id.* at 162.

<sup>8</sup> See Cases 15-E-0302, *et al.*, Implementation of a Large-Scale Renewable Program and a Clean Energy Standard, (issued August 1, 2016).

opt-in together to be eligible for incentives for a small subset of locations is unreasonable, cost prohibitive, and would create a barrier to participation. Indeed, an all-or-nothing approach to the opt-in is an insurmountable hurdle for the City, and likely other NYPA customers. That is, the cost burdens of such an approach would reduce the funding available for clean energy and energy efficiency programs and impair the City's ability to continue and expand on its prior efforts. Such an outcome would be counterproductive to the State's and the City's clean energy goals, and the City does not believe that the Commission intends a result that would undermine these goals.

The Proposal recognizes, and the City agrees, that some flexibility may be needed to account for some NYPA customers with unique metering arrangements. (Proposal at n.13.) For example, some City accounts might span multiple buildings. In other cases, a single building could include multiple accounts. The use of a per-building *or* a per-premises approach should provide the requisite flexibility. The Commission also should provide for a quick and transparent process to resolve any disagreement between a NYPA opt-in customer and a utility as to what qualifies as a premises or building.

## **POINT II**

### **NYPA CUSTOMERS SHOULD HAVE AN OPPORTUNITY TO REVIEW AND ACCEPT AN INCENTIVE BEFORE BEING AUTOMATICALLY ENROLLED**

The Joint Utilities propose to include a certification on the CEF or ETIP program application form that would automatically enroll a NYPA customer into the opt-in program should it be selected for an incentive. (Proposal at 11-12.) This recommendation should be modified.

While the Joint Utilities are correct that a NYPA customer's decision to opt-in will be highly dependent on its selection to receive an incentive by participating in a CEF or ETIP program, the amount of the incentive likely will be determinative in guiding a NYPA municipal

customer's decision to pursue specific clean energy or energy efficiency projects. If the amount of an incentive is not enough to make a particular project economically viable, then it is unlikely that the City or any other municipal customer would proceed with the project regardless of whether the municipal customer qualified for that incentive in the first place. Automatic enrollment under such circumstances is akin to requiring a NYPA customer to opt-in in order to participate in the CEF or ETIP program, which the Joint Utilities recognized would undermine the Proposal.<sup>9</sup>

The City respectfully recommends that the Commission expressly provide that a NYPA municipal customer should not be enrolled in the CEF or ETIP programs unless and until the customer has applied for and received an incentive or other type of financial support, *and* the customer has been given the opportunity to review the terms and amounts of the award and accepted the award. The proposed certification should be revised concomitantly. Not only will this recommendation remove a significant barrier to NYPA municipal customers participating in CEF and ETIP programs, it will provide assurances to the Commission, NYSERDA, and the utilities that NYPA municipal customers will move forward with clean energy and energy efficiency projects and assist in achieving the City's and State's public policy goals.

### **POINT III**

#### **NYPA SHOULD COORDINATE CLOSELY WITH THE UTILITIES TO INTEGRATE THE OPT-IN WITH THE BILLING PROCESS**

The Joint Utilities recommend that NYPA manage the opt-in process and transfer the list of customer accounts to the utilities for billing purposes as needed. This has the potential to affect

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<sup>9</sup> See Proposal at 11 (“Creating a requirement that NYPA customers must already be opted-in to participate in a CEF or ETIP program would cause significant uncertainty for NYPA customers and would likely discourage participation in the programs.”)

billing arrangements for NYPA municipal customers. For example, Con Edison provides NYPA with usage information on an account-by-account basis for every NYPA customer within Con Edison's service territory, but NYPA is charged a cumulative amount for its customers. NYPA then issues bills to each New York City Governmental Customer showing the amount charged for each account.

There have been some issues regarding coordination between Con Edison's account information and that used by NYPA. Through much effort among Con Edison, NYPA, and the customers, these issues largely have been resolved. The City is concerned that having the utilities bill directly for the CEF and ETIP surcharges could cause new billing problems and lead to confusion because of multiple invoices for the same account.

Close coordination between NYPA and the utilities is needed for NYPA customers who choose to opt-in to these programs. Rather than having the utilities bill the customers directly for the relevant charges, the utilities should report this information to NYPA on an account basis and include the surcharges in their bills to NYPA. Then, NYPA will be responsible for billing and collecting the surcharges from its customers. Providing this information on a per-account basis is important as it will allow for proper auditing of the surcharges levied and allow the customers to ensure that they are being properly charged.

#### **POINT IV**

#### **CLARITY IS NEEDED ON THE MANNER IN WHICH NYPA CUSTOMERS WILL BE PERMITTED TO OPT-IN**

The Joint Utilities propose allowing NYPA customers to opt-in in batches, twice a year, but the Proposal is not clear whether there will be a specific schedule for different NYPA

customers. The Joint Utilities expressed concern about the administrative burdens associated with the Proposal and declined to include any opportunity for open or continuing enrollments.

The Proposal is not clear on how the “batches” will be developed or what the timeframes may be before any NYPA municipal customer will have the opportunity to opt-in. However, the CES has now been adopted and is expected to take effect in 2017. Moreover, both the City’s and State’s ambitious 80x50 goals will require efforts to begin immediately. Lengthy delays in the implementation of the Proposal will be counter-productive and unnecessarily inhibit fulfillment of the City’s and State’s policy goals.

Accordingly, more specificity and clarity on the timing of the opportunity to opt-in is needed. Although allowing the opt-ins to occur on a continuing basis would be a superior alternative, the City recognizes that the opt-ins could present some technical challenges for the utilities. Until the technical issues are resolved, periodic enrollments may be necessary, but such opportunities should occur more than twice a year. Quarterly enrollments would be a reasonable accommodation to the utilities’ technical needs. The best course would be to provide maximum flexibility from the outset and make adjustments later as necessary to address any burdens that arise.

## CONCLUSION

For the foregoing reasons, and subject to the recommendations and modifications proposed in these comments, the City recommends that the Commission adopt the Proposal to allow NYPA customers to opt-in to utility and State clean energy and energy efficiency programs.

Respectfully submitted,

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*/s/ Anthony J. Fiore*

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