STATE OF NEW YORK
DEPARTMENT OF PUBLIC SERVICE

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

INITIAL COMMENTS OF THE UTILITY INTERVENTION UNIT

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I. CONTEXT AND OVERVIEW

The New York State Department of State's Utility Intervention Unit ("UIU") appreciates this opportunity to provide initial comments on the Department of Public Service ("DPS") Staff Straw Proposal on Track One Issues, issued on August 22, 2014. The UIU lauds the Commission for initiating a comprehensive review of the New York electric industry and believes that the Straw Proposal is a useful tool to facilitate further discussion on the specific design, amount and recovery of associated costs, and implementation steps of the Reforming the Energy Vision ("REV") strategy.

The UIU's comments are structured following the sections of the Straw Proposal, as directed by the Commission Secretary. The UIU's initial comments focus on:

(1) The lack of details in the REV proposal, such as estimated costs of implementing REV;

(2) The limited opportunities for stakeholder engagement including the need for intervenor funding for rate and policy cases and the challenges associated with fully engaging residential ratepayers, notably low and moderate income ratepayers;

(3) The risk of inconsistencies between implementing plans resulting from different utility rate cases;

(4) The need for specific consumer protection measures, including much more discussion of the proposal to allow third party access to some ratepayer information without written approval;

(5) The need to differentiate among different types of customers; and,

(6) Problems resulting from the aggressive REV scheduling and bifurcation of Track One and Track Two.

The UIU appreciates the sense of urgency that is reflected in this proceeding's schedule, but urges caution. The UIU agrees with the Straw Proposal that it would not be wise to ignore ongoing changes in the industry. The combination of declining load factors and aging infrastructure present the potential for higher energy and delivery prices. In particular, the Straw Proposal explains that both the cost to replace this infrastructure and, in some instances, the need to expand capacity to meet peak demand are expected to be distributed over a flat sales growth, which would be reflected in higher customers' bills. The Straw Proposal explains that the increasing adoption by some customers of distributed energy resources ("DER"), if left to occur in a haphazard fashion, could result in negative impacts on utility system planning and operations, putting upward pressure on the bills of those customers who are not involved in DER as utilities seek to recover their fixed costs from a smaller group of customers.

Rather than adopting the Straw Proposal's principles at this time, the UIU recommends that the REV Proceeding adjust its timing to advance detailed development of Track Two Issues and develop the proposed benefit cost analysis ("BCA") so that the Commission, the parties, and ratepayers can better understand the impacts of the Straw Proposal's recommendations. Before proceeding, it is important to understand how residential ratepayers would benefit from the Straw Proposal's implementation and how those residential ratepayers who are unable or uninterested in participating in DER markets would be protected from paying higher bills for the same basic high quality service they now receive. The Straw Proposal currently assigns much of the implementation design and details of REV to utility-specific rate cases. This plan will place a significant resource challenge on residential consumer advocacy organizations and also may lead to a lack of clarity when inconsistent outcomes are achieved across rate cases. A more measured approach would allow citizens groups a more meaningful opportunity for participation. These groups stated, in comments filed on July 18, 2014, that the pace and nature of the process thus far had significantly impeded their ability to participate.

The Commission previously has recognized that the State's two largest groups of customers are residential and small non-residential customers.[1] However, the Straw Proposal does not comprehensively discuss or propose solutions to several issues that continue to be of significance to residential ratepayers. These include: (1) the unresolved issues identified in the Commission's current retail energy market in Case 12-M-0476, the most recent Retail Access Proceeding;[2] (2) the large number of residential ratepayers who are terminated from service; (3) limited consumer participation in Commission rate case and policy proceedings due to lack of funding; and (4) the disparate low-income discounts that vary from service territory to service territory as the result of negotiations rather than a uniform policy. The UIU believes that these issues must be addressed within the REV proceeding and solutions to these existing concerns incorporated into the new structure ultimately established by REV.

In addition to the problems generated by the aggressive scheduling of the REV processes, the bifurcation of the REV discussion into two tracks, Track One for the Distribution System Platform Provider ("DSP Provider") and Track Two for the regulatory and ratemaking structures, and the subsequent sequencing of these two tracks have made it more difficult for stakeholders to develop a wholly informed evaluation of the Straw Proposal. DPS Staff's first recommendation is for the Commission to adopt the basic elements of REV, yet nowhere are these elements clearly defined or their costs estimated. More specifically, the UIU believes that decisions made during Track Two should inform the policy decision expected in Track One and that the incentives, penalties and other regulatory and ratemaking structures that are developed and would affect the BCA framework, parties and decision-makers may not evaluate the Straw Proposal in the same way as is now being done in isolation. Accordingly, the UIU recommends that the Commission afford the parties with the opportunity to submit additional comments on this Straw Proposal after the Track Two roundtable discussions and the BCA are completed and the Track Two Straw Proposal is issued. This schedule adjustment would not

[1] Case 12-M-0476, Proceeding on Motion of the Commission to Assess Certain Aspects of the Residential and Small Non-Residential Retail Energy Markets in New York State, Order Taking Actions to Improve the Residential and Small Non-Residential Retail Access Markets (issued February 25, 2014), page 1.
[2] Case 12-M-0476, supra.

necessarily delay REV and may help to uncover potential impediments that could be mitigated before the near-term actions are taken.

The UIU is concerned that the Straw Proposal does not adequately address the issues of estimated costs of going forward with REV implementation and the barriers to customer engagement. The UIU generally supports the expanded use of DER but believes that this proposed expansion should be balanced against the associated costs and impacts to the public. Unfortunately, the Straw Proposal does not provide any estimated costs of REV, and there is a lack of a BCA or any other necessary studies that indicate that implementing REV policies and programs would result in static or lower financial costs to the public. Although the Straw Proposal does provide some estimates of potential savings on pages 9-10, these estimates may be overstated given potentially different circumstances in the energy market in the future when there is large-scale implementation of REV policies and programming.

The UIU echoes several of the parties' recommendations in their July 18, 2014 comments that a thorough BCA should be completed before any of the proposed policies and programs are implemented to ensure that the recommended REV structure is the most efficient solution to the identified challenges facing the electric industry. In addition to conducting a BCA, the REV discussion may also be aided if reports of pilot programs of structures and mechanisms related to aspects of REV policies and programming such as the Brooklyn Queens Demand Management ("BQDM") Program were made available to the public. The UIU notes that Con Edison has proposed another demand response program involving voluntary time of use rates; lessons learned from this pilot may also provide important information relevant to the design and likely REV outcomes. Before undertaking a dramatic restructuring of the energy market, stakeholders should be afforded a greater opportunity to assess the implementation of DER concepts.

Additionally, a discussion of the outcomes resulting from the Commission's Smart Grid Policy Statement, issued on August 19, 2011,[3] with an explanation of why the Straw Proposal recommends a much more rapid pace than was contemplated earlier would help

[3] Case 10-E-0295, Proceeding on Motion of the Commission to Consider Regulatory Policies Regarding Smart Grid Systems and the Modernization of the Electric Grid.

provide support for the Straw Proposal. At pages 73-74 of the Smart Grid Policy Statement, the Commission explained:

> With diverse needs, resources and legacy systems, the course and pace of smart grid deployment efforts will vary among utilities, and it is unlikely that a single solution will emerge as appropriate, cost-effective, and useful for all electric utilities and their customers. We further expect that building the smart grid is a process that will unfold over years and even decades. We therefore have not prescribed a particular end-state or deployment schedule for moving this effort forward.

The Smart Grid Policy Statement also envisioned an emphasis on customers, stating on page 74:

> As the electric system undergoes this profound transformation, all parties, including the Commission, must utilize creativity and collaboration in order to allow this cultural and technological shift to occur more effectively and in a way that is more responsive to customer needs. We will continue to engage and collaborate with the utilities, other states, consumer advocates, and other stakeholders to ensure that the grid meets customer needs, operates with improved efficiency, security, and reliability, and sustains the growth of New York's clean energy economy into the future.

In contrast, the Straw Proposal appears to recommend shifting the Commission's focus from customers' desires to market animation. As a result, the UIU recommends further exploration of this new approach through significant engagement with customers and consumer advocates before adoption of the Straw Proposal.

II. ESTABLISHING REV: DSP MARKET VISION

A. Distribution System Functions Required Under REV

2. Competitive Offerings

At page 14, the Straw Proposal states:

> The transactional platform established by the DSP will enable the offering of value-added services, some of which are directly enabled by the utility's monopoly status and others that can be provided by multiple entities on a competitive

> basis. Utilities, utility affiliates, and third parties should be able to provide competitive value-added services. With appropriate incentives, utilities are expected to be innovative in developing services, and the allocation of revenues from such services should depend upon whether or not the services are enabled by the utility's monopoly. This should be further addressed in Track Two.

The concepts touched upon in this paragraph are complicated, and provide support for the UIU's recommendation that the resolution of Track One issues be put aside temporarily while the parties tackle difficult Track Two issues such as the form and cost of the utility incentives. The parties and the Commission may decide that the price of innovation by the utilities is too high or that the task of separating competitive value-added services from monopoly services is overly resource-intensive. Such a discussion would have significant implications for the implementation of REV.

Another important unresolved matter not yet resolved that influences Track One is the determination of what constitutes a "value-added service." In the Retail Access Proceeding,[4] the Commission initially decided that ESCOs would have to guarantee that their low-income customers would pay no more than they would have paid the utility, unless the ESCO provided "value-added energy efficiency services." However, subsequent written submissions by parties and discussion at a technical conference failed to develop an acceptable level of value that would warrant higher ESCO prices compared to utility prices. The Commission ultimately stayed this aspect of its order, and, consequently, many low-income ESCO customers are still likely paying more for commodity than they would have paid had they remained full service customers of their utility.[5] This is just one example of the many complicated issues that should be resolved before adoption of the Straw Proposal.

[4] Case 12-M-0476, supra, Order Taking Actions to Improve the Residential and Small Non-Residential Retail Access Markets (issued February 25, 2014).

[5] Case 12-M-0476, supra, Order Granting Requests For Rehearing And Issuing A Stay (issued April 25, 2014)

B. DSP Market Structure

At page 15, the Straw Proposal states: "End-use customers and DER service providers should become active DSP market participants and sell products and services directly to the DSP." This statement is an example of the shortcomings of using one term—customers—to refer to the myriad types of ratepayers with differing characteristics such as industrial, commercial, residential, urban, suburban, rural, high usage, low usage, high income, low income, energy efficient, energy inefficient. While it may be feasible for certain consumer sectors to become active DER participants, it is improbable to assume that all consumers will have the same ability to do so, namely, the low-to-moderate income, residential sector.

The UIU also has concerns about two statements on page 16 of the Straw Proposal. First, the Straw Proposal states: "The end-state market should be transparent, providing all market participants with the data required to understand what values different DER products could provide in different circumstances and locations and with clear information on how compensation will be provided for those values." The UIU believes that the apparent limiting of transparency to the end-state market is ill-advised. Rather, transparency at all times must be the hallmark of each phase of every market sanctioned by the Commission, not just the end-state market. Transparency should be required at all stages of development and should be equally applied to the existing retail market, where it currently is not applied.

Second, the UIU is concerned about the second listed market design principle, expressed in the Straw Proposal: "Customer protection—balance market innovation and participation with customer protections." The UIU seeks clarification that DPS Staff did not intend to recommend any relaxation of existing customer protections.

C. Oversight of Market Participant's Roles and Interactions

The last paragraph of this section (at page 18) raises many important questions.

> The Commission will maintain a critical oversight role in the market. This will include establishing guidance and processes for market rule making, approving investment plans and rate designs by regulated utilities, and reviewing the activities of

> ESCOs, third-party service providers, and utilities for compliance with market rules. The Commission's oversight role will be most pronounced during the earlier transitional phases, as markets and market rules are developed and improved.

It is not clear from the Straw Proposal precisely how the Commission would "maintain a critical oversight role in the market." Further explanation is required so the parties can better understand if the recommended paradigm is similar to that of the relationships among the Federal Energy Regulatory Commission, the Board of Directors of the New York Independent System Operator ("NYISO"), wholesale market participants and members of the NYISO's governance structure.

The Straw Proposal suggests that the Commission's oversight role could diminish as the DER markets mature, yet, after 15 years, problems still exist in the retail access market that require Commission attention. Similarly, if this experience is any guide, there will still be a need for Commission oversight for years to come.

III. ENABLING NEW ROLES FOR KEY PARTICIPANTS

A. Identity of the DSP Provider

The Straw Proposal recommends the establishment of six utility DSP Providers rather than one independent provider while acknowledging (on page 22) that the utilities do "not currently have all of the capabilities and competencies needed to successfully operate" as DSPs. The Straw Proposal remarks: "Utilities will likely need to hire new staff with different skill sets. In developing the DSP, utilities should consider creating DSP market departments that sit at the same level as other key functional departments, thereby creating clear lines of responsibility and reporting." Overall, the Straw Proposal recommends almost two dozen actions that utilities should pursue. Further exploration of the DSP Provider recommendation as well as the other recommendations are required to assess the costs associated with staffing new departments at the six utilities, as well as the cost recovery mechanism, before the Straw Proposal is adopted. By way of comparison, the NYISO employs more than 500 people and has an annual budget of approximately $150 million. It is possible that creating the equivalent of six utility DSP providers with functions comparable to the NYISO's will introduce redundancies that are not efficient. The UIU requests clarification of how, in the absence of intervenor funding, residential ratepayers will be able to participate meaningfully in the governance of six separate entities.

B. Customer Engagement

The UIU agrees with the Straw Proposal's observation on page 22 that "efforts to modernize the power system require a new focus on customers as actively engaged partners." Utility ratepayers and energy consumers should be front and center at the focus of Commission deliberations; DER markets should serve ratepayers and consumers, not the other way around. The Straw Proposal notes that despite the Commission's promotion of retail energy markets over the past 15 years, less than one quarter of residential ratepayers purchase commodity from an ESCO and "the vast majority of customers in New York currently lack the information, products, technologies, and incentives to fully participate in energy markets and take control of their monthly electricity bills." For this reason, the UIU urges the Commission to perform a lessons learned analysis of the retail energy markets experience, along with the goal of improving the current retail energy markets, before finalizing new structures for the DER markets.

The UIU is concerned that the Straw Proposal seems to place undue reliance on the Residential Electric Customer Interest Survey. The sample size is small; only 700 completed the survey, representing only about 40 percent of the people contacted. In other words, 60 percent of the people contacted did not have sufficient interest in the issue to complete the survey. Second, the scaling is also atypical for surveys, ranging in a zero to ten scale from "not very interested ("0") to "very interested ("10"). Not having a choice such as "not at all interested" tends to skew the results towards exaggerating the level of interest. Finally, the survey questions appear not to have introduced the subject of payment for these potential DER services. Associating a range of costs with inquiries about levels of interest might have affected the responses. Accordingly, the UIU is not convinced that the survey "indicates the potential for substantial increases in residential customer adoption of home energy management and DER products."

1. Data Access and Privacy

i. Data Exchange

On page 24, the Straw Proposal recommends a major change in New York policy and practice, suggesting that some customer information should be available to third parties unless the customer objects. Currently, the specific data of a ratepayer is not shared with third parties unless the ratepayer affirmatively agrees to such sharing. This is known as "opting in."

In its Smart Grid Policy Statement, issued on August 19, 2011, the Commission discussed its long-standing practice of protecting customer data, stating on page 70: "Our customer data principles apply to the utility's provision of customer energy usage data to a third party on behalf of the customer…. These principles apply to any use of customer energy usage data obtained from the utility, regardless of whether such data is sufficiently detailed to be classified as personally identifiable information." The Commission stated its support for several principles on pages 71-72 of the Smart Grid Policy Statement:

- Data policies and practices must be clear, transparent, and explained to customers.
- No customer data should be collected without the express consent of the customer.
- Only data relevant to the specific purpose should be collected.
- Data acquired for one purpose should not to be used for others.
- All reasonable steps should be taken to prevent the loss, theft, or unauthorized modification of customer data.
- Customers should have the right to access, confirm, and demand correction of their personal data.
- All third-party entities handling customer data should be held responsible for complying with the same privacy principles.

The Commission recognized on page 70 of the Smart Grid Policy Statement that smart grid development may open the door to other third parties offering a variety of energy products and services, including demand aggregation, and sophisticated energy management and device control provided through smart phones or web portals. It explained that this development would necessitate extending the principles embedded within the rules more generally over third party providers, including classes of providers that may not yet exist: "In doing so, we would need to consider specific detailed protocols to facilitate third party access for various new technologies consistent with the need to maintain and ensure privacy protections."

On page 71 of the Smart Grid Policy Statement, the Commission asserted that authorization for such access must be given affirmatively, through an opt-in process that reflects and records the customer's informed consent. The Commission further asserted that such authorization must specify the purposes for which the third party is authorized to use the data, define the term during which the authorization will remain valid, and identify a means through which a customer can withdraw his/her authorizations. The Commission suggested on page 72 that a revision of privacy protections may be warranted as smart grid technologies became more sophisticated and pervasive:

> We note that privacy concerns are greatly exacerbated by the implementation of smart meters and the collection of granular usage data that can function as personally identifiable information. Although the principles articulated above will generally apply to all customer data, as the data becomes more detailed and powerful, more detailed and specific procedures and safeguards may be needed to ensure appropriate privacy protections. Due to the early implementation of smart meters in other jurisdictions, many entities have already begun developing model business practices for the collection, use and disclosure of smart meter-based information, e.g., the National Energy Standards Board (NAESB). We will likely revisit this issue, perhaps conducting the privacy impact assessments recommended by NIST [the National Institute of Standards and Technology], as the proper management of smart meter and other granular customer data become more relevant, and may conduct further process to clarify our privacy policies respecting the smart grid before further deploying smart grid technologies that impact the collection and use of customer energy usage data.

Without conducting a detailed analysis, the Straw Proposal would now allow routine sharing of some ratepayer information. While the Straw Proposal would establish a variation on current protections – "To preserve customer privacy and security, customers should be given the option to opt-out of the information exchange." – this recommended change could raise a host of privacy and security concerns. Equally important, the recommendation suggests that DPS Staff is not convinced that the residential interest in DER products is sufficiently robust for these customers to engage in DER markets on their own volition. Before adopting the “opt out” paradigm, the Commission should discuss its implications with residential ratepayers and consumer advocates to gauge consumer acceptance.

2. Customer Acceptance

As noted earlier in our Section II Comments, further clarification is needed regarding the role of the Commission in the REV world before adoption of the Straw Proposal’s recommendations. The following paragraph on page 27 alludes to many significant aspirations that require careful discussion of specific details and examples from current Commission practice as well as how these aspirations would be implemented. The Straw Proposal explains that deployment of DER would require market transparency and continued Commission oversight and involvement, where appropriate, to ensure that consumers have fair access and sufficient confidence that participation will provide them value; however, the Straw Proposal does not elaborate upon how that objective would be accomplished:

> In order to improve and maintain customer confidence in market participants and market information, it is imperative that rules for participation are developed and enforced. The efforts to animate markets through this REV proceeding should not be seen as foregoing any of the Commission’s regulatory authority but rather a sharpening of the regulatory tools such that the Commission can swiftly deal with bad actors, improper exercise of market power, and other barriers to customer engagement without unduly burdening competition innovation.

Given the pace with which the Commission is addressing problems with the retail access program, it is not clear which changes are intended to enable the Commission to “swiftly deal with bad actors.”

The Straw Proposal also states on page 27 that one objective of REV is to “improve people’s lives” through the creation of choices for enhanced energy products and service offerings. In the UIU’s experience, most residential ratepayers are primarily concerned with having reliable service at a reasonable cost. New York’s electric industry does provide consistently reliable service but New Yorkers pay among the highest rates in the country. A focus on cost containment must be a primary objective of REV.

The UIU is very interested in exploring further the concept of Community Choice Aggregation ("CCA") discussed on pages 27-28 of the Straw Proposal. The Department of State has been working with local governments promoting New York's smart growth policies, and would like to help develop and implement this approach. The CCA model has the potential to build and strengthen communities, perhaps more so than other parts of the Straw Proposal which focus on people as individual consumers rather than residents of a community.[6]

2) Billing and Engagement

On page 29, the Straw Proposal observes that regulatory requirements and legacy system limitations are preventing the utility bill from reaching its full potential as a customer engagement tool. The Straw Proposal states: "The content and format of utility bills, particularly concerning charges by non-utility entities, as well as the ability of non-utility and non-ESCO providers to bill through the utility, represent significant barriers to full DER animation, and should be explored through a collaborative effort led by Staff." The Straw Proposal asks each individual utility how much it would cost to make available approximately 1000 characters on customer bills for ESCO bill messages concerning DER or other energy-related value-added services. The UIU urges that this cost not be borne by ratepayers when the benefit is actually conferred to the competitive entities. The Straw Proposal also recommends that utilities explain why they cannot implement this change within six months of issuance of a Commission order. Considering the length of time it has taken some utilities to implement the important on-line bill calculator, it seems

[6] Several aggregation programs appear to have been successful throughout the country. Cincinnati, for example, implemented an electric and natural gas aggregation program where the electric aggregation program guarantees the price for electric supply will be lower. Regardless of any price changes each month, the customer is guaranteed a 23% discount on supply portion of their bill. For the natural gas program, Cincinnati expects the average household to save approximately $163 annually on its natural gas bills. See http://www.cincinnati-oh.gov/cityofcincinnati/news/city-saves-residents-163-on-natural-gas-bills/aggregation-frequently-asked-questions/

New Jersey's Community Clean Aggregation Program has also seen savings for residents in various municipalities throughout the state. http://njccea.org/

unreasonable to assume that the utilities will divert resources in order to quickly complete a project like this. The UIU also requests clarification about whether each ESCO/DER provider would be entitled to 1000 characters, or whether that amount of space is for all the providers together.

3. Affordability

The UIU appreciates the Straw Proposal's discussion of the Commission's responsibility to ensure that rates are just and reasonable in particular the statement on page 30 that "existing utility bill relief goals and customer protections must be maintained throughout this transition." However, the UIU seeks assurance that the Commission will not eliminate customer protections, even at the end-state.

On pages 30-31, the Straw Proposal states that "the cost of implementing REV must be weighed not only against the direct benefits of REV measures, but also against the cost of inaction." However, as noted earlier, DPS Staff has not presented a fully developed and vetted "cost of implementing REV" to compare against a fully developed "cost of inaction."

ii. Low-Income Customer Engagement

On page 31, the Straw Proposal acknowledges that the low and moderate income participation in the REV markets is a concern and cites the drivers as split incentives; lack of access to financing; and the unwillingness of some providers to engage customers with payment troubles. The Straw Proposal notes that REV will encourage participation from all customer classes by targeting measures to address system needs and cites Con Edison's BQDM initiative as an example of a proposal to address system overloads in a low-to-moderate income area.

However, it is not clear that the BQDM initiative is a good example of how DER products can be targeted to low-income customers. The majority of low-income people living in the subject area reside in master-metered New York City Housing Authority buildings. It is not obvious how these residents could interact with DER products since they do not have their own meters. Accordingly, any data resulting from implementation of the new DER products in this area will not likely indicate responsiveness by individual low-income consumers.

As discussed earlier, the Straw Proposal focuses on broad concepts that rely on markets to drive the adoption of energy efficient products and services. The UIU is concerned that the Straw Proposal lacks sufficient consideration of how this market driven approach could impact low-to-moderate income residential customers. Rather than deferring discussion of this issue to utility-specific implementation plans, as suggested in the Straw Proposal, DPS Staff should facilitate that discussion now with the parties and specific, actionable measures applicable to all service territories should be adopted by the Commission. The Commission should ensure that more specific protections for residential ratepayers are included in the framework for REV, especially for those customers in low-to-moderate income communities to ensure that customers who are financially barred from participating in DER markets do not pay for DER products used by others.

To address the potential problems of unequal access to efficient energy resources, a number of stakeholder groups have suggested various protections that the Commission should adopt to ensure that the new energy efficient products and services are affordable to all consumers.[7] The UIU agrees that a number of consumer protection measures should be put into place to ensure that all customers are able to benefit from the development of REV. Specifically, affordable access should be made a priority, which may be implemented through alternative rate structures for DER products and services. This step would make more likely that residential energy consumers are able to benefit from DER products and services as much as the large-scale commercial sectors. Other consumer protection goals that should be considered are (1) the creation of an intervenor funding program; (2) the establishment of a fixed discount for low-income customers, as

[7] See Joint Comments of Alliance for a Green Economy, Binghamton Regional Sustainability Coalition, Catskill Mountainkeeper, Citizens Awareness Network, Citizens Environmental Coalition, Citizens for Local Power, Hudson River Sloop Clearwater, Inc., New York Environmental Law and Justice Project, New York Solar Energy Society, Nuclear Information and Resource Service (NIRS), People of Albany United for Safe Energy (PAUSE), People United for Sustainable Housing (PUSH Buffalo), Sierra Club Atlantic Chapter, Southern Cayuga Anti-Fracking Alliance (SCAYAFA), and Syracuse Peace Council. (July 18, 2014) [hereinafter, “Joint Comments of AGE et al”].

is done in California; and (3) the reduction of barriers to shared renewable energy ownership.

While the UIU recognizes and appreciates that the Straw Proposal makes mention of the Commission's commitment to affordable service and low-to-moderate income customer engagement, the lack of a detailed implementation plan may lead to increased energy costs that would prevent low-to-moderate income customers from participating in REV programs. In their joint comments, the American Association for Retired Persons, the New York Public Interest Research Group and the Public Utility Law Project ("PULP") expressed concerns that the policies and programs that are being considered in the REV may result in higher prices and costs imposed on ratepayers in return for greater projected environmental benefits. PULP's recent analysis of utility collection activity reports indicate that millions of New Yorkers have fallen behind in their payments for essential utility gas and electric service.[8] If utility rates were to rise as a result of REV, a greater number of residential customers would be unable to remain current on their utility bills, thereby increasing the rate of late payment, non-payment and disconnection of essential electric service. Without a firm commitment on the part of the Commission to ensure that the impact of rate increases will be minimized for ratepayers, the implementation of REV may result in negative financial implications for low and moderate residential customers if they can afford to participate at all.

Furthermore, in terms of the financial viability of REV policies and programs, it is imperative for the Commission to create an evaluation plan for the REV processes that includes off-ramps and check points to ensure REV is meeting goals and is providing better alternatives to the existing energy products and services. Stakeholders such as Citizens for Local Power ("CLP") have also noted the importance of the creation of metrics to evaluate the successful implementation of REV as well as an established timeline for implementation goals. This sentiment is echoed in the joint comments submitted by the Alliance for a Green Economy et. al, which also suggests that an important metric to track

[8] See, Comments of AARP, NYPIRG and Public Utility Law Project of New York, Inc. ("PULP") (July 18, 2014).

performance should be lowering customer bills.[9] To support this idea, the Alliance for a Green Economy states:

> …under a well designed and implemented REV regime electric bills should decline for many consumers based on decreased fuel consumption and efforts to use less electricity. … This metric would also need to account for fuel price changes, both as a result of the REV and the impacts of clean energy investments on fuel prices and fuel prices changes occurring independently. This issue of attribution/correlation is important to include in order to avoid drawing flawed conclusions on the impacts of the REV.

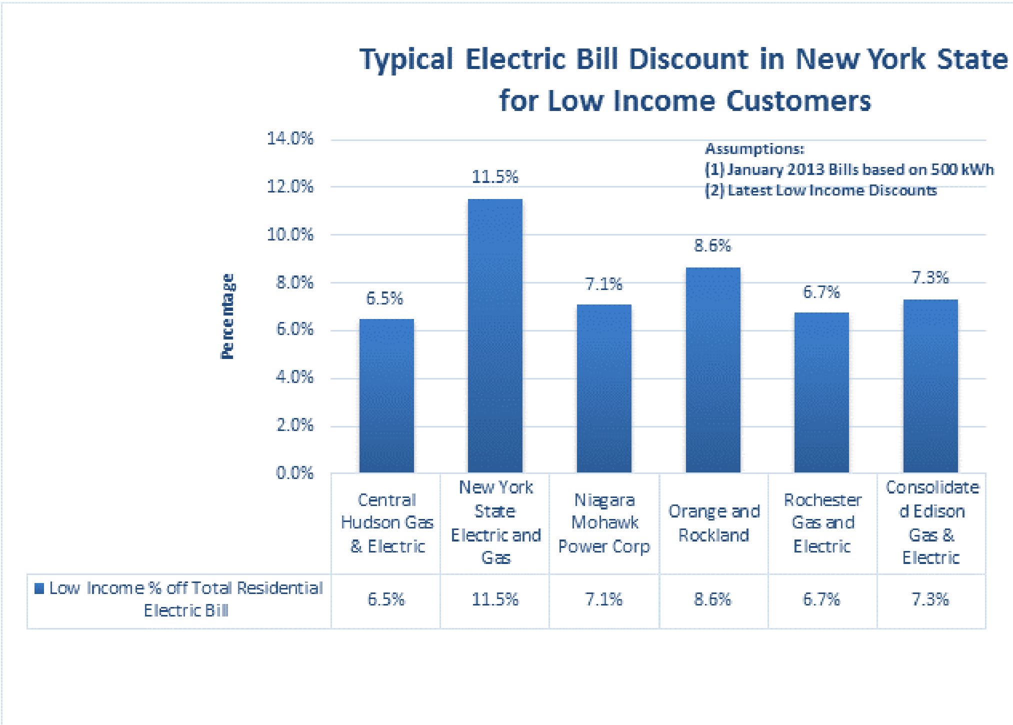
One of the metrics used to assess effectiveness of the strategies identified in the Draft New York State Energy Plan will be based on maintaining "residential customer electric bills as a percentage of household income at or below the national average."[10] Such a metric is appropriate to assess the effectiveness of DER for residential customers. These lower customer bills would also be an indication that DER markets are increasing demand response and customer exposure to accurate price signals. By using lower customer bills as a metric for evaluating REV, the Commission could also further their stated goals of improving customer satisfaction and increasing access to DER products and services to low and moderate income customers who otherwise would not have been able to benefit from them.

The Straw Proposal recommends that each utility file a plan to implement the Straw Proposal's vision. However, potential inconsistencies between the plans would present additional hurdles for consumer participation. The Straw Proposal offers no specific proposals to help low and moderate income customers pay for basic service and, instead, recommends that each utility individually propose measures for its service territory to accomplish that objective. The resulting potential inconsistencies would likely have a significant adverse effect on those groups not afforded ample opportunities to be heard earlier in the REV process, specifically local interest groups that represent low and moderate income residential consumer interests. Much of the implementation design and details have been assigned to utility-specific rate cases, thereby placing a significant

[9] See, Joint Comments of AGE et al.
[10] New York State Energy Planning Board, 2014 Draft New York State Energy Plan, "Shaping the Future of Energy", (Vol. 1, 2014).

resource challenge on residential consumer advocacy organizations. As noted above, different rate cases may result in inconsistent outcomes as a result of compromises made in specific negotiations.

An excellent example of disparate outcomes resulting from the vagaries of settlement negotiations in utility-specific rate cases is the variety of low-income discounts that currently exists in different service territories.[11] This is shown in the graph below.



A significant amount of resources and time are devoted to discussing the appropriate discount level in negotiations. The UIU recommends establishment of a standard state-wide discount modeled on California's approach. With such an approach, all low-income ratepayers are treated the same regardless of the service territory in which they live.

The issue of limited stakeholder involvement has been noted in a number of comments that were previously submitted in reference to this proceeding. CLP notes in their comments that the REV discussion that has taken place thus far has been skewed towards industry professionals and is less focused on public interest issues. New York City ("NYC") stated in its July 18, 2014 comments its belief that the schedule for REV

[11] The UIU invites DPS Staff and the utilities to correct any factual errors in this table.

proceedings has been set too aggressively. The UIU agrees with CLP's and NYC's assessment of the REV process, given that the Straw Proposal does not address the issues raised in the Retail Access Proceeding. The overly aggressive scheduling of REV may have resulted in the inadvertent neglect of these issues, which have significant impact for low and moderate energy consumers.

The Straw Proposal also lacks a specific plan to account for the barriers to customer engagement, especially in terms of those customers in the low-to-moderate income, residential consumer sector. The Straw Proposal states on page 26 that "customers should have ready access to their own energy usage data in a secure and standard format." The proposal goes on to note that new tools are being developed to facilitate energy consumers' awareness and understanding of DER and other energy-related value-added services, so that the likelihood of DER adoption by the average consumer would increase. The UIU agrees that more data should be provided to consumers regarding their own energy use, but the proposal does not state how these new tools would be financed and made available to the average consumer. A detailed financing plan providing consumers with more options should be developed as a necessary supplement to this discussion.

As noted earlier, the UIU also agrees with the Straw Proposal with regard to the adoption of new avenues of customer engagement, especially the idea of CCA, which would be a viable means to empower communities to assume responsibility for their own energy choices. The Straw Proposal as well as a number of parties have noted a problem with split-incentives, which presents a significant obstacle to the adoption of energy efficient products and programs. Further REV discussions should focus on developing programs that enable traditionally underserved, low-to-moderate income consumers, who often live in rented housing, to participate in REV programs. These consumers represent a vast, untapped market for the adoption of cost-effective energy efficiency. By making affordability a top-level priority in the REV process, the Commission may better fulfill its obligation to ensure reliable service at reasonable rates for all New Yorkers.

C. DER Providers and ESCOs

When the Commission embarked upon retail access in the 1990s, it touted some of the same benefits for residential customers that the Straw Proposal repeats, noting on page 33 that "[T]he REV proceeding is an opportunity to re-focus ESCO business plans for mass-market customers toward effective delivery of DER products and services." Yet, 15 years later, shortcomings remain as indicated by the low participation rate of only 24% of residential customers purchasing supply from an ESCO and ongoing complaints about market and pricing.

The latest attempt to improve the retail market was instituted on October 19, 2012 in the Retail Access Proceeding following disclosure of information showing that most electric ESCO customers paid more over a two-year period than they would have had they remained full service customers of National Grid-Upstate. The proceeding also addressed persistent reports of marketing improprieties. Although the Commission issued an order on February 25, 2014 directing improvements that would have better protected residential consumers, on April 25, 2014, the Commission issued an order staying several aspects of its earlier order including:

1. The requirement pertaining to independent third party verification;
2. The requirement pertaining to ESCO service of customers participating in the Home Energy Assistance Program (HEAP) and/or utility administered low income assistance programs);
3. The requirement that the utilities submit and begin to use revised service termination notices and "charge back" to an ESCO any differential described in PSL§32(5) (d);
4. The requirement that ESCOs file quarterly historic prices with the Secretary with regard to prices for small non-residential customers;
5. The revised requirements regarding ESCO price reporting on the Power-to-Choose website, with regard to small non-residential customers; and,
6. The requirement that utilities implement ESCO-specific purchase of receivables rates.

Before enlarging the role of ESCOs, the UIU urges the Commission to resolve the issues raised in Case 12-M-0476.

The Straw Proposal also states on page 33:

> [B]ecause distribution utilities will rely on DER products to support reliable service, the Commission has an interest in maintaining business standards for DER providers. Accordingly, Staff recommends that DER providers participating in DSP markets should be subject to some degree of Commission oversight. Parties are encouraged to comment on this issue.

Not surprisingly, the UIU is in favor of Commission oversight of DER providers; however, the degree of appropriate oversight cannot be determined at this time.

IV. GAUGING FEASIBILITY

B. Benefit Cost Analysis Framework

1. Principles to Guide BCA Framework Development

In typical utility project planning, a company weighs the merits of alternative projects and selects among the most cost effective to meet its expected needs.[12] Its planning horizon is typically long-term and through its assessment of the benefits, costs, and risks, the merits of a project are generally understood. In a REV system, a number of different actors are expected to make financial decisions that may have merit to themselves and benefit the electric system, but these individual financial decisions are often based on different criteria than those a utility uses. Individuals' and businesses' investment considerations may be on a shorter time horizon, carry expectations of a higher discount rate, and may not fully understand the benefits and costs. Because the REV structure is transitioning from a centralized utility decision structure to a dispersed individual decision structure, the BCA should be especially robust to reflect the various perspectives for investment decisions.

As defined on page 43 of the Straw Proposal, a "benefit-cost analysis is a systematic quantification of the net present value of a particular action." The success of REV will largely depend on individuals' willingness to adjust behavior and/or make capital investments and the Straw Proposal acknowledges that a sound BCA is required to

[12] "Least-Cost Electric Utility Planning", Harry P. Stoll, 1989.

support investment, among other things. The decision to make a capital investment from a business or an individual perspective is often based on a variety of capital budgeting methods beyond a positive net present value BCA because other factors may influence an individual's decision to invest in a project. For example, a DER project that has a positive BCA with high capital costs and long payback is clearly viewed less desirable than projects with a low capital costs and short payback. But from an individual's perspective such a DER project may not be pursued at all even though it has a positive BCA. Therefore, the BCA should consider other capital budgeting methods, such as a simple payback, that may influence investment decisions that could impact widespread adoption of DER. This type of assessment could help inform the BCA assumptions and sensitivity analysis or may identify additional methods for evaluating DER.

The UIU agrees that the BCA should be conducted on the full-life of the investment and be compared to a reasonable business-as-usual case. The UIU also agrees that a sensitivity analysis should be conducted on key assumptions including high/low load forecast, varying load shapes, high/low fuel prices, and high/low adoption rates of DER resources. If the DER adoption rates are low, utility upgrades may still be needed. These types of system improvements should be considered when conducting a low DER adoption rates sensitivity analysis. The details of the BCA methodology should be developed with stakeholders, as discussed in more detail below. A robust sensitivity assessment can help identify vulnerabilities if future conditions differ from what is expected and identify conditions that may be appropriate to create check points to assess the progress of REV or have defined off-ramps.

The Straw Proposal recommends on page 44 that a benefit-cost analysis be conducted on a portfolio basis rather than individual measures or investments. The UIU agrees that a portfolio based assessment is necessary to compare to a business as usual case including sensitivities. The UIU recommends that a BCA also be assessed on individual measures because the UIU is concerned that assessing only a portfolio may result in uneconomic investments. If a portfolio's uneconomic investments occur first and the expected high BCA projects that would shift the portfolio to a positive BCA do not occur, then the initial investments are not justified. Therefore, all elements of REV should be measured on an individual basis. This type of analysis could identify the elements of

REV that need additional support or are not practical to pursue. If the key element(s) by which REV could not proceed has an uneconomic BCA then, as the Straw Proposal recommends, it would be appropriate to allow for use of judgment on these critical elements.

The UIU supports the Straw Proposal's recommendation on page 44 to report the BCA results from a Societal Cost Test, Utility Costs Test, and a Rate Impact Measure and suggests that the Total Resource Cost test be included as another point of information. All of these tests are made on best estimates and projections but inherently have imperfections. Comparing the BCA among tests will help to assess if a project is in fact appropriate to pursue. If a proposal's BCA passes all tests, then clearly it should be pursued. But if a proposal passes only one test, the viability of that proposal should be reconsidered. How these tests are weighed in pursuing a proposal should be included in the discussions with stakeholders described below. These tests are useful to assess if ratepayer dollars are being invested prudently from different sectors' perspectives. As noted above, however, individual investment decisions that are needed for REV to succeed are often based on different factors and the UIU recommends that they be considered when developing the BCA assumptions.

3. Proposed Process for Developing the BCA Framework

The Straw Proposal on pages 48-49 suggests that the BCA framework requires a significant amount of additional work and stakeholder involvement to further specify input assumptions, the benefits and costs to include and methodologies to value them, and the application of the BCA. The Straw Proposal also recommends a number of technical conferences to solicit stakeholder input to address these details and suggests that a utility or third party may be needed to create an initial straw proposal and subsequent iterations. The UIU is concerned that technical conferences may be inadequate to develop such a critical aspect of REV. Technical conferences tend to be a one-way discussion with presentations followed by written comments rather than a dialogue to exchange ideas. A more efficient approach could be for a third party to develop alternative BCA methodologies and tests that includes a discussion of the various merits and weaknesses of each alternative. After the report on the alternative BCA methodologies and tests is issued, working group meetings could address specific aspects of the BCA, with a full exchange of viewpoints among stakeholders. With clearly defined BCA proposals before stakeholders and a defined topic for each meeting, the working group structure should be more productive and yield more specific proposals that have benefitted from input and discussion by all stakeholders.

4. BCA for Tariff Pricing and Resource Procurement Provisions

The Straw Proposal indicates on page 49 that the BCA could be used to arrive at appropriate tariff rates for certain products and services to be offered by the DSP and will be considered as part of Track Two. However, the results of the development of incentives, penalties and other regulatory and ratemaking structures and their impact on the BCA framework will likely influence the parties' and decision-makers' evaluation of the Straw Proposal. For example, how the costs of implementing REV are paid for and how these costs will be incorporated into embedded cost of service studies, could change both the rate structure for a given service classification and change the overall savings/costs and impact the BCA. Consequently, the UIU suggests an extension of the Track One schedule to accommodate the filing of further party comments after the Track 2 straw proposal is issued so that findings and recommendations from Track Two could help inform elements of Track One.

V. BUILDING THE DSP MARKET

A. Clean Energy

1. Transition

The Straw Proposal recommends on page 51 that New York State Energy Research and Development Authority ("NYSERDA") continue to provide "access to clean energy services to low-income customers and others that may otherwise not be able to readily participate in energy markets." The UIU seeks clarification that the intent of this sentence is to recommend that NYSERDA's REV responsibilities include provision to low and moderate income residential ratepayers of all appropriate DER products and services, including current energy efficiency measures, as well as development of community microgrid systems and CCAs. Additionally, UIU would also like to better understand how, if at all, REV, the Green Bank, and the Clean Energy Fund are envisioned to coordinate their respective missions.

VII. IMPLEMENTING REV: FINDINGS AND RECOMMENDATIONS

E. Considerations for Next Steps

For the reasons discussed above, the UIU urges a more measured approach to the issues raised in the REV Proceeding. The Commission should take the time now for thorough engagement with customers and consumer advocates to understand better what customers perceive as their best interests, including a frank discussion of the qualitative and quantitative costs of business as usual compared to those costs that are likely to result from the REV approach. During this period, the UIU urges the Commission to complete the process envisioned in the Retail Access Proceeding to fix the problems with its current retail energy markets program, develop intervenor funding protocols for rate and policy cases, and institute a consistent low-income discount.

Moreover, before adopting the recommendations contained in the Straw Proposal, much more work should be done on the type of structures and processes the Straw Proposal characterizes as next steps on page 81.

> Many of the recommendations in this Proposal, if accepted and adopted by the Commission, will require the establishment of some type of ongoing structure, or follow-up process whether short-term or ongoing. Examples of structures include a body to design the standards and technologies for the DSP to ensure standardization and uniformity, as far as possible, among the state's utilities; and they also include an entity to monitor the progress of DER market penetration in the state and ensure that barriers to market entry are eliminated as best as possible. Examples of processes include the development of a methodology to approach and design a reimagined approach to the calculation of benefits and costs, and the development of consumer protections for basic electric service.

Each element of this paragraph refers to major undertakings that require much thought, consideration of policy and technical expertise, and weighing of countervailing opinions, and then implementation of proposals on a pilot basis to test their efficacy. The UIU also recommends that the Commission direct DPS Staff to conduct an analysis of the results of the initiatives the utilities have conducted in response to guidance offered by the Commission in the Smart Grid Proceeding (Case 10-E-0285). This analysis may provide useful information regarding the design and implementation of REV.

Respectfully submitted,

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