October 22, 2024

VIA ELECTRONIC FILING
Honorable Michelle L. Phillips
Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, NY 12223-1350

Re: Case 24-E-0414 - Petition of New York Solar Energy Industries Association Seeking Modifications to the New York State Standardized Interconnection Requirements to Allow Use of Alternative Forms of Financial Security for Distribution Upgrades in Excess of $500,000 for New Distributed Generators and/or Energy Storage Systems 5 MW or Less Connected in Parallel with Utility Distribution Systems.

REPLY COMMENTS OF NEW YORK SOLAR ENERGY INDUSTRIES ASSOCIATION

I. Introduction

On October 11, 2024, the Joint Utilities (JU) responded to the New York Solar Energy Industries Association (NYSEIA) petition seeking authorization to use alternative forms of financial security for distribution upgrades in excess of $500,000. The core reason that NYSEIA opted to file a petition rather than continuing to negotiate with the JU in the Interconnection Policy Working Group (IPWG) was the JU's inability to efficiently arrive at internal consensus and their poor use of working group time and resources. Therefore, NYSEIA respectfully submits the following expedited responses for the Commission's consideration.

II. NYSEIA Response to Joint Utilities Positions

The JU outline seven (7) recommendations in response to NYSEIA's petition. Responses to each are outlined below:

1) *Modify the SIRs to specify acceptable forms of alternative financial security for distribution upgrades, initially limited to the use of standby LoCs for this purpose. Standby LoCs should not be used as a method of payment to the utilities and should only be drawn upon in the event of default or dispute resolution.*

NYSEIA objects to this narrowing of the proposal to exclude surety bonds. A key purpose of NYSEIA's petition, and the original proposal put forth 18 months ago in the Interconnection Policy Working Group (IPWG), was to ease the financing burden for expensive and long lead-time distribution upgrades, thereby increasing liquidity in the Distributed Energy Resource (DER) market and lower the cost of predevelopment. NYSEIA asserts that reducing the cost to finance distribution upgrades protects ratepayers by reducing the cost of ratepayer funded programs like NY-Sun and the pending Retail Storage Incentive Program over time. Simply put, LoCs are both more expensive than surety bonds and have a lesser benefit from a liquidity perspective. NYSEIA asserts that the intent of distribution upgrade deposits is not to be a "cash equivalent" but rather for the interconnection customer to make a financial commitment to hold their queue position and to provide the utility with certainty regarding future payment.

Furthermore, NYSEIA's proposal for both surety bonds and letter of credit is such that a distribution utility would never be asked to mobilize for construction for any distribution upgrades before receiving cash payment. NYSEIA's proposal took care to ensure that alternative forms of security would only be accepted until the point in the interconnection process where the utility would mobilize for or commence construction; after that point in time, the interconnection applicant must make the required payments in cash.

Surety bonds can meet the intent of distribution upgrade deposits, and should be an acceptable alternative form of security. Surety carriers are well established, providing investment grade quality securitization to obligees (*i.e.,* utilities). Additionally, surety bonds are no more difficult to administer than letters of credit. Like letters of credit, surety bonds are annual, and often feature renewal language or renew through a clause. While the JU comments exaggerate risk of nonpayment associated with surety bonds, NYSEIA concurs with the JU that guidelines should be established to ensure that surety bonds are issued from creditworthy financial institutions to protect against such risk.

2) *Set the threshold for projects seeking LoCs to distribution upgrades in excess of $1 million for an initial period of eighteen months. Following Department of Public Service Staff's (Staff) evaluation of the impacts of this change at the conclusion of this initial term, the greater than $1 million project size threshold could, to the extent appropriate, be downwardly adjusted.*

NYSEIA objects to this narrowing of the proposal. If alternative forms of security are only available for distribution upgrades in excess of $1M, it will limit the overall usefulness and impact of this proposal. The JU rationale for a higher threshold is to limit administrative burden for the JU. However, the JU claim that administering alternative forms of security is more administratively burdensome than proper cash accounting has not been substantiated.

Additionally, the JU assert that the interconnection customer should pay for all such administrative costs (an assertion that NYSEIA does not object to). For these simple reasons, NYSEIA reaffirms its recommendation that the Commission set an initial threshold of $500,000.

3) *Utilize utility-approved standardized forms where possible to facilitate consistency and efficiency. Should the Commission adopt the use of LoCs, each member of the Joint Utilities should have at least 120 business days to submit proposed standardized forms for stakeholder review and comment.*

NYSEIA respectfully requests that this timeline be shortened to 60 business days (*i.e.,* 3 months), which should be sufficient time to submit proposed LOC and surety bond forms for stakeholder review. As the JU points out in its comments (at 6), NYISO already has standard templates and letter of credit language available for use as a starting point – to be modified as required to meet the considerations raised in this reply and any forthcoming commission order on this matter. NYSEIA reminds the Commission that the Joint Utilities already accept alternative forms of security for transmission-level upgrades, and this topic was discussed at length in the IPWG throughout 2023 and 2024. Further delays are not warranted, and 60 business days should provide the utilities with ample time to put forth proposed standardized forms for public comment.

4) *Require that the interconnection applicant bear all administrative costs associated with establishing, monitoring, and executing LoCs to prevent negative impacts on utility customers.*

NYSEIA does not object to this proposal, as evidenced by the proposed fees included in NYSEIA's SIR redline that accompanied our petition. In fact, these fee amounts were negotiated with the JU in the IPWG and were agreed to by all stakeholders. NYSEIA believes these fees are appropriate, and we do not believe the JU should incur meaningfully higher costs to administer alternative forms of security than the costs to properly account for cash deposits, nor have the JU provided any information to suggest otherwise.

5) *Maintain the current payment structure for interconnection milestones, permitting the use of standby LoCs at the initial 25% payment milestone but requiring subsequent milestone payments to be exclusively satisfied by cash.*

This JU position matches NYSEIA's petition. NYSEIA's petition seeks authorization for the use of alternative forms of security in lieu of cash deposits for the 25% payment milestone, and, in cases where the Cost Sharing mobilization threshold has not yet been reached, for future milestones. NYSEIA's intent, and the SIR redline provided with our petition, is designed to ensure that the utility receives cash payments before mobilization and construction milestones, i.e., before major costs are incurred to complete distribution upgrades.

6) *For cost-sharing projects, allow the use of LoCs, initially limited to standby LoCs, for the 25% down payment. Cash would be required at the 75% construction payment milestone if the project has reached the mobilization threshold, or in the case of transformer upgrades, according to the payment milestone schedule described in Appendix A hereto. Existing provisions within the SIRs regarding project withdrawals and refunds for cost-sharing projects should remain unchanged.*

This JU position matches NYSEIA's petition.

7) *Explicitly exclude the use of surety bonds due to the associated risks and collection*

challenges imposed on the utility that is the beneficiary of such bonds.

As noted above, NYSEIA objects to this narrowing of the proposal, which will limit its beneficial impacts.

III. Additional Reply Comments

Minimum Issuer Requirements: NYSEIA supports the JU recommendation that issuers of alternative forms of security should meet high creditworthiness thresholds. For Surety Bonds, NYSEIA supports industry standard requirements that the surety maintain an "A" A.M. Best rating, as well as a requirement that the surety be treasury listed. For Letters of Credit, NYSEIA supports a minimum issuer requirement of an investment grade rating. NYSEIA also encourages the Commission to explicitly grant a waiver for financial institutions that are an arm of the New York State government, such as the New York Green Bank.

Project Size Threshold: As noted above, NYSEIA objects to the JU proposal to increase the eligibility threshold to $1M. If the Commission finds the JU argument that NYSEIA's proposed threshold of $500,000 is too low compelling, NYSEIA encourages the Commission to identify a compromise position that does not unduly limit the use of alternative forms of security.

Cost Recovery: The Joint Utilities assert that the costs of administering alternative forms of security should be borne by interconnection customers, and propose that the appropriate fees and billing mechanisms be explored over an eighteen-month period through IPWG. As noted above, NYSEIA does not object to the JU assertion that interconnection customers should pay for these costs. However, the JU have not provided any information suggesting that it will be more expensive to administer an alternative form of security than to properly account for and manage cash deposits. The JU and NYSEIA negotiated fees for reviewing letters of credit in the IPWG last year, which were included in NYSEIA's proposed SIR redline. NYSEIA does not object to the JU recommendation that the utilities monitor their actual costs and bring cost data to the IPWG for exploratory discussion. In fact, NYSEIA is currently advocating for the JU to transparently track and disclose their true distribution upgrades in multiple venues. NYSEIA respectfully reminds the Commission that any incremental administrative costs associated with alternative forms of security for distribution upgrade deposits will be quite modest in comparison to the utilities' much larger, and rapidly increasing, distribution upgrade costs. Greater transparency and oversight of distribution upgrade costs are paramount to maintaining the integrity of New York's interconnection process.

Define Acceptable LoCs: The JU assert that the Commission should only authorize the use of Standby Letters of Credit, and specifically not allow for the use of Commercial Letters of Credit. NYSEIA disagrees. The purpose of NYSEIA's petition is to provide interconnection customers with tools to enable more cost-effective interconnection in New York State. Not every financial instrument is equally accessible, affordable, and useful for a particular instance, and providing a few options will increase the overall value of this proposed interconnection reform. The JU comments correctly articulate a few key differences between Standby and Commercial Letters of Credit. Namely, Standby Letters of Credit are only drawn upon in the event of default, whereas

Commercial Letters of Credit are drawn upon when certain conditions are satisfied.

NYSEIA expects that Commercial Letters of Credit would more likely be used for transformer bank upgrades, whereby (according to both NYSEIA's SIR redline and the alternative proposed by the JU) multiple payments would be made in accordance with a milestone payment schedule. Developing DERs in New York State's regulatory environment is increasingly challenging; flexibility and optionality are critical tools that will allow more cost-effective DERs to be deployed in the near-term. NYSEIA encourages the Commission to authorize the use of Standby Letters of Credit, Commercial Letters of Credit, and Surety Bonds as alternative forms of security for distribution upgrades in excess of $500,000.

Standardization: NYSEIA supports the JU proposal to create standardized forms, with the caveat that 1) the JU should publish drafts in three months (60 business days) rather than 120 business days; and 2) any forthcoming Commission order on this matter should acknowledge that financial institutions often have their own standard forms, and the JU must review and consider reasonable deviations from their standard forms in a timely manner. This is addressed in NYSEIA's SIR redline that accompanies our petition.

Cost Sharing Projects: NYSEIA appreciates the JU acknowledgement that NYSEIA's SIR redline accounts for the various scenarios that can occur for cost-sharing projects.

Process Clarification: The JU request that the Commission clarify that cash payments always be remitted directly from the interconnection customer to the utility rather than by the financial institution issuing the alternative form of financial security. NYSEIA objects to this request, as it does not consider the use of Commercial Letters of Credit. For Commercial Letters of Credit, it is the expectation of both parties that the financial institution remit payment to the recipient as conditions are satisfied.

IV. Conclusion

Allowing for the use of alternative forms of security for distribution upgrades in excess of $500,000 will support New York to cost-effectively integrate DERs and support progress toward New York's clean energy mandates. The JU comments in response to NYSEIA's petition largely re-state positions that were discussed extensively in IPWG over the last 18 months, and do not provide significant new information. NYSEIA thanks the Commission for its consideration of NYSEIA's petition and urges swift action.