

STATE OF NEW YORK
DEPARTMENT OF PUBLIC SERVICE

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

COMMENTS OF AARP and
PUBLIC UTILITY LAW PROJECT OF NEW YORK, INC.
ON

DEVELOPING THE REV MARKET IN NEW YORK:
DPS STAFF STRAW PROPOSAL ON TRACK ONE ISSUES

September 22, 2014

INTRODUCTION AND OVERVIEW

AARP, a nonprofit organization, helps people over the age of 50 to exercise independence, choice, and control in ways beneficial to them and to society as a whole. AARP members, many of whom live on low or fixed retirement incomes, need affordable, reliable utility service. Millions of AARP members reside in New York State.

The Public Utility Law Project of New York, Inc. (“Utility Project”) is a not for profit organization representing the interests of low-income persons in utility and energy matters.

In preparing these comments we have been assisted by Barbara R. Alexander, Consumer Affairs Consultant,¹ who has a national practice on consumer protection regulation of public utilities and alternative energy suppliers.

These Comments should be considered as supplemental to the overarching concerns and issues raised in our July 18, 2014 Track 1 and Track 2 Comments and the July 18, 2014 Joint Letter of Consumer groups to the Commission that identified defects in the process by which this REV initiative is being undertaken, as well as identified numerous key questions and issues that should be included in the analysis of how and whether to proceed with the REV mandates set forth in the Commission’s April Order. Many of those questions and issues have not been reasonably or properly addressed in the Staff’s Straw Proposal.

The purpose of these Comments is to respond to the Department of Public Service (DPS) Staff Track One Straw Proposal issued on August 22, 2014 in this proceeding. This proceeding was initiated with the Commission’s April 2014 Order that Staff describes as proposing “a platform to transform New York’s electric industry, for both regulated and non-regulated participants, with the objective of creating market-based, sustainable products and services that drive an increasingly efficient, clean, reliable, and customer-oriented industry. Under the customer-oriented regulatory reform envisioned here, a wide range of distributed energy resources will be coordinated to manage load, optimize system operations, and enable clean distributed power generation. Markets and tariffs will empower customers to optimize their energy usage and reduce electric bills, while stimulating innovation and new products that will further enhance customer opportunities.”²

Pursuant to the process set forth for considering the policies and regulatory reforms needed to implement the REV objectives, Track One will consider policy changes and overall reforms needed to implement these objectives and Track Two will consider ratemaking and rate recovery reforms. Therefore, the pending Staff Straw Proposal concerning Track One issues does not address costs, ratemaking, rate design, incentives, or customer bill impacts. As stated in the Track One Staff Proposal, “In a subsequent order related to Track Two of this proceeding, the Commission should consider ratemaking reforms that will push utilities to enable the market transformations described in this proposal.”³

¹ Ms. Alexander’s expertise in this area is a reflection of over 30 years of professional experience in consumer protection policies and programs, both with respect to consumer credit transactions, public utility regulatory policies, and regulation of retail competitive markets.

² Staff Straw Proposal at 1.

³ Staff Straw Proposal at 2.

The Staff Report affirms the Commission's objectives as set forth in the April REV Order and proposes initial steps to implement these objectives:

- Enhanced customer knowledge and tools that will support effective management of their total energy bill;
- Market animation and leverage of ratepayer contributions;
- System wide efficiency;
- Fuel and resource diversity;
- System reliability and resiliency; and
- Reduction of carbon emissions.

As stated by the Staff, there are 259 parties engaged in the REV proceeding. However, almost none of these parties represent residential and/or low-income consumers. Nowhere was this lack of consumer participation more evident than in development of the Report issued from the Customer Engagement Committee. This Committee's report filed on July 8, 2014 Committee stated that 158 individuals from 90 organizations participated in the discussions that led to this Report and its recommendations about how to stimulate customer engagement in time varying rates, demand response programs, and distributed generation programs. These individuals were identified as associated with Utilities, ESCOs, Government, Large Customers, Commercial Customers, and Others. The "others" include non-profit research institutions, energy and demand response/smart grid associations, energy efficiency providers, environmental policy advocates, technology providers, solar providers, and real estate boards and companies. However, none of these individuals or organizations is identified or identifiable as representing residential and/or low-income consumers. Furthermore, there was nothing in the Committee report that reflects this observation or that discusses how to address this lack of representation. Unfortunately, there is no discussion or recognition of this lack of representation in the Staff's Track One Straw Proposal either. As a result, there is a significant defect in the REV process due to the lack of representation of those individuals and parties who are likely to end up with significant costs and higher bills to pay for these new mandates and reforms, but who typically lack the resources and time to participate in the proliferation of workshops, orders, and proceedings associated with this initiative.

In general, the Commission should take this lack of participation into account in considering proposals for reform that are not accompanied by the proper consideration of the costs to achieve these objectives and bill impacts for essential electric service that will be imposed on residential ratepayers, particularly those struggling to pay today's bills.⁴

The Comments of AARP and PULP provide specific input on a number of the issues raised by the Staff's Track One Straw Proposal, organized as requested, by the Sections in the Staff's proposal. However, our overall recommendation is that the Commission slow down this process. The list of REV Objectives is far too broad and generic to conclude that they are

⁴ Collection activity reports filed with the Commission by the nine investor-owned utilities plus the Long Island Power Authority show that as of May 2014, 1.1 million residential customers who are more than 60 days in arrears owe more than \$900 million to the utilities, more than 600,000 shutoff notices were sent in May 2014, and that annually service is shut off to more than 250,000 customers as a bill collection measure.

appropriate to be adopted at this time. Most importantly, there is nothing in this list that indicates that the achievement of any of these outcomes would be cost effective or affordable for electricity consumers in New York. It would not be appropriate or reasonable for the Staff's Straw Proposal to be adopted without a full understanding of the costs that may be incurred to achieve these objectives, with what bill impacts, whether these recommendations can be achieved under the current statutory authority of the Commission, the identification of the incremental costs and resources that will be necessary for the Commission and the distribution utilities to implement these directives, and whether the available technologies are at a sufficient scale and reliability to allow for significant deployment at this time.

Furthermore, the scope and scale of these proposed reforms are not required to implement a number of potentially less expensive and effective demand response and DER programs. Our Comments suggest and number of potential initiatives that could be undertaken under the current statutory authority of the Commission and that do not require the potential expensive and controversial policies recommended by the Staff.

SECTION I.B.1: COMMENTS ON CRITICAL PATH OBJECTIVES

Rather than moving forward to adopt policies without a full understanding of the evidence and experience that is necessary to understand their impacts on costs, customer participation, and how these changes will be linked to changes in ratemaking policies and unknown incentives relegated to Track Two, AARP and PULP recommends that the Commission adopt a more focused and reasonable path:

1. Track One policy changes should not be adopted in isolation from the Track Two ratemaking and cost implications. It is unreasonable to consider adopting radical changes in the policies that govern the role of the distribution utility in New York without a full understanding of the implications of these policies in terms of ratemaking policies, rate design policies, and how the bill impacts associated with these policy driven objectives will impact the affordability of essential electric service for New York consumers;

2. Distribution utilities should be required to prepare plans that document that cost effective distributed energy technologies and programs are integrated into their system planning, with the short-term objective of identifying the locations and opportunities where least cost and cost effective DER programs and investments can be targeted;

3. The Commission should ensure that **ratepayers realize the net benefits from the optimal use of distributed resources at minimal cost to integrate these resources into the electric system**. Any proposals for expansion of DER programs and investments should be accompanied by evidence that the proposal is cost effective compared to alternatives, that costs have been fairly allocated to those who stand to benefit from the investments, and that the proposal represents the least cost approach to achieving existing statutory objectives for reliable service at reasonable costs and rates. This approach will enable the gradual development and implementation of DER based on an evaluation of specific investments that are accompanied by evidence to support their effectiveness, costs, and bill impacts.

4. The Commission should adopt a policy that supports smaller scale demonstration projects for technologies and programs that are untested or where the impact of these proposals are unknown or lack valid experience and results. This is particularly important

when considering programs that will require a large-scale participation by customers in order to be successful or cost effective.

5. In general, utilities that propose to recover REV mandated investments from ratepayers should be required to submit a performance plan that documents how the promised benefits will be tracked and delivered to ratepayers. Ratepayers should not pay additional costs for alleged benefits related to societal objectives that are beyond those policies currently articulated in statute. .

SECTION I.D.1: COMMENTS ON BUSINESS AS USUAL

The Staff's Straw Proposal states, "The expected benefits and costs of pursuing the REV vision need to be considered in comparison to the cost of a "business as usual" scenario in which current programs are maintained and the electricity system develops in reasonably anticipated ways. The electric industry environment in New York in which REV is being developed is characterized by numerous conditions that indicate a need for systematic change."⁵ One of the "drivers for change" identified by Staff is that, "Aging infrastructure, with 14,000 MW of non-hydro generation facilities over 40 years old, and approximately \$30 billion needed to support transmission and distribution systems over the next 10 years (not including NYPA and LIPA)."⁶ However, this statement is not documented with any citations or means to determine how this figure was derived. Even more importantly, there is no basis in this statement for the determination that this "need" has been or will be approved as prudent and subject to cost recovery in distribution rates.

We agree New York should plan for the future of distribution and generation supply services. However, the statements made by Staff do not support the conclusion that the REV policy changes will actually respond to these drivers for change or that the identified "benefits" of REV will actually occur or, if so, at what cost. The continuous leap of faith in the Staff's Straw Proposal that the REV policies will deliver benefits and that those benefits will exceed those delivered by the current system is not justified by facts and evidence.⁷ None of the "benefits" listed by the Staff are quantified or even documented as "solving" the conditions that are identified as potentially causing negative impacts for consumers.

The Staff's admission that, "[o]f the more-easily quantified benefits, it is premature to develop precise figures at this time, although illustrative examples of potential savings and avoidable costs indicate the scope of the potential benefits and justify a Commission order to advance to the next stage of REV"⁸ is insufficient to justify the Staff's proposed next steps. The Staff's "illustrative examples" reflect either hypothetical results from hypothetical programs or examples of pilot projects conducted in other jurisdictions without any basis for assuming that the project or pilot program would be cost effective or even appropriate for any New York utility. None of these examples reflect any costs or documentation that the resulting benefits will exceed costs for ratepayers. AARP and the Utility Project do not

⁵ Staff Straw Proposal at 7.

⁶ Staff Straw Proposal at 7.

⁷ The Utility Project has made a pending FOIL request for Staff's workpapers and records relied upon in making the \$30 Billion estimate for "business as usual" costs.

⁸ Staff Straw Proposal at 9.

recommend that the Commission adopt dramatic policy changes or order distribution utilities to undertake new and potentially costly initiatives based on such hopes or flimsy evidence.

Having rejected the far-reaching policies and directives included in the Staff's Straw Proposal, AARP and the Utility Project agree that electricity prices in New York are high, that those prices may increase even more due to some of the current mandates for renewable resources, distributed generation, net metering, and other obligations to improve the infrastructure of the distribution system to respond to extreme weather events. However, there is no evidence or trends identified in the Staff's proposal to indicate that these trends can be ameliorated or that prices would be lower under the recommended REV policies and directives.

Unfortunately, it is more likely than not that the costs embedded in the REV policies and initiatives reflected in this Proposal will only exacerbate these trends toward higher prices and higher bills for essential electric service. It is incumbent upon the Commission to document the basis for any assumption that the programs and initiatives reflected in the REV initiative will benefit residential customers with more affordable electric service compared to the ongoing mandates and costs that are being imposed on ratepayers.

SECTION I.D.4: COMMENTS ON REV/DSP ACHIEVABILITY

According to the Staff's Straw Proposal, "...the technology needed to enable DSP functionalities is achievable," and "Although system development and standardization are needed to adapt technologies to DSP functions, these developments are definable and well within the range of existing technologies and capabilities."⁹ The conclusions reflected in this discussion are again made without any evidence as to the large-scale implementation of these technologies, the customer acceptance and engagement with these technologies, or the cost implications of implementing these programs on a large scale.

The Staff concludes, "More importantly, these costs will be reduced as REV is implemented, by the monetization of value streams, streamlining of delivery systems, reduction of barriers to customer participation, and economies of scale. Cost and benefit estimates will be refined in utility filings and DSP procurements."¹⁰ There is no evidence that has been subjected to public review and due process procedures that would justify such a conclusion.

AARP and PULP do not agree that these conclusions are reasonable, appropriate to make at this time, or that any evidence exists to support these far reaching statements.

SECTION II: COMMENTS ON ESTABLISHING REV: DSP MARKET VISION

AARP and PULP support the existing role of the utilities to achieve cost effective and least cost DER initiatives. Those objectives can be met without any change to the statutory obligations to ensure reliable, safe, and affordable electric service for customers. This objective does not require the radical change in the DSP definition as proposed by Staff: "The DSP is an intelligent network platform that will provide safe, reliable and efficient electric services by

⁹ Staff Straw Proposal at 4.

¹⁰ Staff Straw Proposal at 11.

integrating diverse resources to meet customers' and society's evolving needs. The DSP fosters broad market activity that monetizes system and social values, by enabling active customer and third party engagement that is aligned with the wholesale market and bulk power system."¹¹

This definition would require statutory changes and has potentially radical implications for evaluation of costs and benefits in utility ratemaking and rate design.

What it would take to turn the existing electric grid into an "intelligent network platform" is unknown and without any parameters relating to costs and benefits. Furthermore, the notion that the DSP or the existing utility would be empowered to "monetize system and social values" goes beyond the current statutory objectives associated with electric service and has the potential to endorse or support radical and unknown changes in rates and rate design. Finally, to suggest that the DSP must support market activity to enable "engagement that is aligned with the wholesale market and bulk power system" suggests that the policies that govern New York utilities pricing and rate design will be transferred to federal authority and control.

New York's utilities should not be required to pass through costs to their customers or implement programs that reflect short-term wholesale market price signals. Distribution services and default generation supply service should be designed to provide reasonably stable and least cost service to their customers. This objective does not prevent the development of cost effective demand response programs, such as those that may offer an optional time of use rate design or a peak rewards program that provides customer credits for allowing an interruption in central air or hot water heaters during critical peak usage events. However, those programs, for which there are many large scale and successful examples, do not require the installation of expensive smart meters or the infliction of short term wholesale market spot prices on most customers. Rather, if properly designed and targeted, a relatively small percentage of customers who participate in these programs can have a significant impact on lowering capacity needs that benefit all customers.¹²

¹¹ Staff Straw Proposal at 12.

¹² For example, the evaluation of Commonwealth Edison's (ComEd) large opt-out dynamic pricing program found that actual participation by customers was equivalent to the participation and demand load response results from the typical 10% voluntary opt in dynamic pricing pilots. In Illinois, as part of a larger pilot program to test meter-related savings, ComEd designed a pilot to test customer behavior for 8,000 customers using a variety of pricing programs, such as CPP, PTR, hourly pricing, and inclining block rates. The Effect on Electricity Consumption of the Commonwealth Edison Customer Application Program Pilot: Phase 2 Final Analysis, Electric Power Research Institute ("EPRI Final Report"), p. iv, October 20, 2011. Customers were enrolled in the various dynamic pricing rates on an opt-out or negative option basis and received a variety of in-home technology options at no cost, including in-home displays, smart thermostats, and a website with enhanced energy usage information from the smart meter along with tips on how to respond to their particular pricing program. Id. Overall, EPRI found that none of the treatment cells – combinations of pricing and technology options – demonstrated a statistically valid overall usage reduction or a statistically valid peak load usage reduction. Id. As a result, ComEd could not verify any of its hypotheses that the various pricing programs coupled with the various in-home technology options would result in a statistically valid change in customer usage behavior. EPRI's Final Report concluded that approximately 10% of the opt-out customers showed some peak load reduction similar to the opt-in pilots conducted elsewhere and, "[a]n opt-out recruitment strategy by itself does not appear to encourage a greater treatment response level than opt-in pilots." Id

With regard to the “principles for market design”¹³ recommended by Staff, AARP and the Utility Project urge the Commission to adopt “principles” that reflect the current statutory guidance and not reinvent the role of the utility or mandate new obligations on customers without a clear understanding and discussion of the costs and benefits associated with any new obligations and programs. Of particular concern are the “principles” that appear to endorse the creation of competitive markets for DER and the interaction of unregulated third parties in regulated utility services, the design of markets to promote societal goals and a “cost analysis” that includes benefits unrelated to regulated utility services, and the promotion of integrating essential electric service into wholesale markets to “reflect full value of service.” These principles and policies should not be adopted at this time. They are premature and require far more analysis as to whether they comport with current statutory authority and how they might impact the primary obligation to deliver essential electric service to customers.

SECTION III: COMMENTS ON ENABLING NEW ROLES FOR KEY PARTICIPANTS: CUSTOMER ENGAGEMENT

According to the Staff’s Straw Proposal, customers are not fully “engaged” and, “Efforts to modernize the power system require a new focus on customers as actively engaged partners.”¹⁴ The Staff’s proposal also quotes from a recent survey of residential electricity customers in New York conducted on behalf of Staff, NYSEERDA and the New York Smart Grid Consortium.¹⁵ However, this survey and its “findings” as stated by the Staff have not been the subject of any evidentiary hearing and should not be relied upon to make statements about what customers want or might do with new technologies or DER programs. It would be entirely reasonable for customers to attach a high priority to understanding the price of electricity and desire to hear more about the means to reduce their bill. But, if the result of expensive investments in DER is that their usage goes down but the bill goes up due to higher prices to recover the costs of these mandates, the result will continue to be expressed as customer frustration and disillusionment with the regulatory process. There is a long standing experience with the implementation of energy efficiency programs that clearly documents that what customers say they will do with regard to investments even when they are clearly “cost effective” as that term is used by economists is not a prediction about what they will actually do. When household income is stretched to the limit to pay for necessities such as health care, education, transportation, shelter, food, interest on debt, late charges and the energy bills, there is often not much left over for investments in new technologies or home repairs and other measures to reduce or control energy usage. Furthermore, tenants and those who reside in multi-unit buildings have no incentive to make investments in the landlord’s facilities.

Unfortunately, the Staff’s Straw Proposal fails to take into account the most significant barrier to customer “engagement” and that is household income and the lack of sufficient time or resources to focus on a modest reduction in the energy usage when the result may not even be visible on the total bill due to decoupling and surcharges and riders to support mandated programs. In fact, one of the “barriers” to customer engagement identified in the

¹³ Staff Straw Proposal at 16.

¹⁴ Staff Straw Proposal at 22.

¹⁵ Case 14-M-0101; 2014 Survey of Residential Electric Customer Interest in Value-Added Products and Services, August 2014.

Customer Engagement Staff Report that this Staff Straw Proposal ignores are the revenue decoupling mechanisms and other tariff mandates that have a perverse incentive for customers to reduce usage and shift peak load energy use because those surcharges and mandates eliminate all or most of the potential bill savings.¹⁶

While the Staff's Straw Proposal purports to address "affordability," there is little or no discussion of why this issue is important or how it might be addressed in the context of the REV Track One proceeding. Staff does not propose any specific initiative or policy to address the inability of many customers to afford rates and charges at current levels.¹⁷ Similar to many of crucial issues relating to costs and cost recovery, "Additional issues related to rates and bill impacts are directed to Track Two."¹⁸

Similar to our Comments on most aspects of the development of REV policies, this section of the Staff's Straw Proposal fails to reflect the input and concerns of residential and low-income consumers.

SECTION III.B.1: COMMENTS ON DATA ACCESS

AARP and the Utility Project oppose the Staff's Proposal to allow unregulated third party DER providers to have access to personal data about a customer's electric service pursuant to a negative option or opt out methodology. The list of potentially private customer information that the Staff proposes to allow third party DER providers¹⁹ to obtain is intrusive and not appropriate to circulate to entities over which the Commission has no regulatory authority:

- The customer's total electricity usage for the previous 12 months;
- Monthly customer electricity consumption;
- Indicator of whether electricity commodity service is provided by an ESCO or the utility;
- Service classification according to the utility tariff;
- Installed Capacity (ICAP) tag, which indicates the customer's peak electricity demand;
- The number of meters associated with the customer;
- Account information that clearly identifies the customer service to a mapped distribution feeder or other distribution system identifier;
- Additional market information relevant to energy use collected by the utility or authorized third party, such as census data, weather, energy audit data, or other; and

¹⁶ Staff Customer Engagement Report at 11.

¹⁷ See footnote 4, *supra*.

¹⁸ Staff Straw Proposal at 23.

¹⁹ Staff Straw Proposal at 24.

- Other data needs as identified by the Commission.

Furthermore, the release of customer usage (even if limited to monthly usage), the customer's exact location, and the peak load usage tag associated with that meter has serious and potential implications for the safety and security of not only the customer and the household, but the security of the utility's distribution system as well. This proposal should be strongly rejected by the Commission. The Staff's suggests that market participants seeking such data "should be subject to data access registration requirements with the information data exchange operator."²⁰ However, there is no apparent statutory authority identified by the Staff for the Commission to regulate and oversee the enforcement of these "registration" requirements. Nor are the resources needed to adopt this registration and enforcement of these requirements identified or taken into account in the Staff's proposal.

SECTION III.B.2: COMMENTS ON CUSTOMER ACCEPTANCE

The Staff's Straw Proposal repeatedly uses the term "animate the market" and states, "Creating animated DSP markets as envisioned in REV implies that customers will increasingly: 1) be aware of and adopt DER technologies and services; and 2) use DER technologies in such a manner as to optimize their value to the grid and to the customer."²¹ Awareness and adoption are two very different propositions. Furthermore, when or if DER technologies are "used" will not likely occur based on a customer's understanding or desire to "optimize their value to the grid." Rather, customers will likely purchase products or services that they can afford and that they have confidence that they will perform as represented, such as reduced usage or return of value in the form of bill credits or bill reductions. Finally, whether customers purchase and make use of DER technologies and services is also a function of the additional costs associated with these programs and their impact on reducing the overall electric bill.

A good example of a program that recognizes these motivating factors is the Peak Rewards Program implemented by Baltimore Gas & Electric (BGE) and other Maryland electric utilities.²² The distribution utility offers and installs a no cost smart thermostat with several options for allowing the utility to increase the thermostat's setting during critical peak event days that occur primarily during the summer in return for a bill credit. The resulting peak usage reduction is monetized (bid into the capacity auction) by the utility in the PJM capacity market and the resulting payments are returned to all customers to offset the costs of the program. This program has been found to be cost effective by the Maryland Commission and has resulted in the enrollment of over 300,000 residential BGE customers. This program does not require "smart" or interval meters and was implemented prior to the deployment of those meters, a process that is still underway at BGE. Customers who participate receive a bill credit and are not required to purchase, install, or maintain the device. Nor does this program require the development of a new "vision" or reform of the current policies that govern essential electric service.

²⁰ Staff Straw Proposal at 25.

²¹ Staff Straw Proposal at 27.

²² See, <http://www.bge.com/smartenergy/smart-energy-rewards/Pages/default.aspx>

AARP and the Utility Project urge the Commission to focus on the development of known and proven demand response programs that do not require new policies or ratemaking reforms.

The Staff's Straw Proposal correctly identifies, "... the need for Commission oversight and involvement, where appropriate, to ensure that consumers have fair access and sufficient confidence that participation will provide them value."²³ The Staff notes the need for "rules for participation are developed and enforced."²⁴ Furthermore, "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."²⁵

These same objectives were promised to consumers with the onset of retail electric competition and the development of appropriate regulatory oversight of ESCOs. However, the torturous and ultimately ineffective development of licensing and consumer protection regulations to govern ESCOs has failed to provide the necessary assurances and protections that consumers need. New York has not yet adopted the necessary regulatory reforms or enforced those regulations with swift and fair prosecutorial actions. In part, this disappointing history is due to the lack of clear statutory authority and the failure to allocate sufficient resources and priorities to the consumer protection agenda associated with the implementation of retail energy markets. In fact, the Commission's initiative to respond to the onslaught of customer complaints about ESCO services and prices starting in 2013 has still not resulted in needed substantive reforms in business regulations and licensing requirements.²⁶ There is unfortunately no basis for concluding that a similar result would not occur with the expansion of the Commission's authority over "DER providers."

With regard to the three barriers to customer engagement specifically addressed in the Staff's Straw Proposal (time of use rates; billing and engagement; and split incentives), AARP and the Utility Project offer the following comments.

Time of Use Rates. Time of use rates have been available as an option for many years but the reason that most consumers do not want to participate in such rate options (a phenomenon that is not unique to New York) is that most consumers would be at risk of paying much higher prices for essential electricity at certain times of day, because they cannot shift usage to off peak hours. Consumers prefer flat rates with stable pricing methods.²⁷ It is

²³ Staff Straw Proposal at 27.

²⁴ Staff Straw Proposal at 27.

²⁵ Staff Straw Proposal at 27.

²⁶ The Commission's Order in Case 12-M-0476 (Proceeding on Notion of the Commission to Assess Certain Aspects of the Residential and Small Non-residential Retail Energy Markets in New York State) was issued on February 25, 2014, but many of the key reforms have been stayed (The Order Granting Requests for Rehearing and Issuing A Stay was issued on April 25, 2014) and remain in limbo. As a result, this investigation and promise of reforms (as well as the lack of any formal investigations and enforcement of the current regulations) remains unresolved for almost two years.

²⁷ The surveys conducted by AARP in Pennsylvania and Connecticut of residents at or above the age of 50 demonstrated a clear preference for rate stability and fixed price default service. See e.g. Bridges, Kate, *2013 AARP Connecticut Affordable Energy Survey*, (April 2014) available at <http://www.aarp.org/money/budgeting-saving/info->

possible that some smaller group of customers will choose a well-designed time of use rate option and AARP and PULP do not object to optional time of use rate options offered to customers on an opt-in basis. It should be noted, however, that for 15 years ESCOs have been able to offer varieties of supply pricing -- which has far more time variation in cost than distribution pricing -- yet there is no evidence that they have found significant numbers of small customers interested in time of use rates.²⁸ Such options should only be promoted by the Commission when there is some evidence that the costs of developing and promoting such a rate option is likely to be selected by enough customers to deliver the benefits in the form of reduced usage during peak hours of the day that has value in excess of the costs. This is a matter of facts and evidence and should not be promoted as a policy preference without such a fact-based evaluation.

The Staff states, “Time-of-use rates are not an end in themselves; they provide more accurate price signals for time-variable usage related to system costs and are intended to drive appropriate behavior and investment based on minimizing costs and maximizing value.”²⁹ These objectives can only be met with a fact-based determination of costs and potential customer participation in such programs, including a determination of what impact such a rate option will have on the total customer bill and what dollar amount of value the program is likely to deliver in the form of reduced usage or reduced peak usage. Based on the time of use experiments and programs implemented throughout the U.S., traditional time of use rates (in which there is a change in price based on peak and off peak hours) do not result in overall usage consumption and they have the least impact on reducing peak energy usage compared to other optional dynamic pricing programs that may require expensive AMI or interval meters to implement on a large scale.³⁰ Therefore, the Commission should not focus in any significant way in promoting the existing time of use rate options, but rather focus on development non-AMI enabled demand response programs that target specific customer appliances, such as the thermostat for central air or hot water.

Billing and Engagement. AARP and the Utility Project object to the Staff’s proposal to allow ESCOs to use utility bills (up to about 1,000 characters) to promote “DER or other energy related value added products.”³¹ This proposal appears to allow competitive suppliers to market and attempt to sell their products and services to the utility’s customers even though the customer is not otherwise served by the ESCO for generation supply service. This proposal is an inappropriate use of the ratepayer supported utility billing systems and would constitute a significant subsidy to the profit-making ESCO. Furthermore, such a proposal would apparently subsidize only ESCO marketing activities and not those of other DER providers who may also have useful products to offer to the utility’s customers, thus raising

04-2013/2013-aarp-connecticut-affordable-energy-survey.html.

²⁸ This is true even in states and utility service territories where advanced metering is ubiquitous, such as Texas, Pennsylvania, Maine, Maryland, and Delaware.

²⁹ Staff Straw Proposal at 28.

³⁰ See, e.g., Regulatory Assistance Project, Time Varying and Dynamic Rate Design (July 2012). While the authors of this publication ascribe far more benefits and positive value to dynamic pricing programs than we would accept, the Report documents that TOU has the least peak load reduction among the dynamic rate options studied in most pilots and that dynamic rate pilots generally have NOT documented any overall consumption reduction.

www.raponline.org/document/download/id/5131

³¹ Staff Straw Proposal at 29.

significant market power and unfair competition concerns. Utility bills should not be transformed into a marketing subsidy for any non-utility entity.

Split-incentives. AARP and the Utility Project agree that the issue of “split incentives” concerning the barrier to the adoption of DER assets needs further attention and consideration. However, Staff does not make a proposal as to how to handle this obvious potential barrier on the grounds that, “[m]any of these underlying economic relationships are beyond the scope of Commission authority.”³² However, this issue should be pursued as a joint effort by all those who do have the authority to address this barrier, perhaps led by the Commission. The suggestion that, “DER providers will offer innovative pricing and service options to all customers, including this customer segment, subject to consumer protections contemplated here” appears to deflect this issue to some future unknown resolution that will occur in the “innovative” DSP market, a result that does not appear reasonable in light of the adverse impact of this barrier on the customers who are “left behind” in their responsibility to pay for the new DSP market mandates but who lack the ability to participate themselves.

SECTION III.B.3: COMMENTS ON AFFORDABILITY

The Staff acknowledges, “The responsibility of the Commission and utilities to ensure reliable service at reasonable rates is fundamental.”³³ AARP and the Utility Project appreciate this recognition. Unfortunately, this recognition appears to be relegated to this section of the Staff’s proposals and it does not appear that affordability and concern about bill impacts are reflected in the overall policies and implementation steps recommended in this document.

Of particular concern is the assumption, “The creation of an effective marketplace for DER product deliveries will reduce costs for all ratepayers by optimizing distribution system operations, increasing system efficiencies, reducing the impact of distribution system management on the bulk power system, and deferring capital investments.”³⁴ These are statements of intent, but they are not statements of fact. Nor do any of the overall objectives and policies reflected in this Straw Proposal appear to be limited to those that are affordable. The suggestion by the Staff that utility plans will not be approved unless they “meet the benefit cost analysis criteria described later in this report”³⁵ is an insufficient solace to customers concerned about affordability because, as discussed later in these Comments, those “benefit cost analysis criteria” would allow for consideration of putative societal benefits that may or not result in lower electricity prices to justify near term costs to ratepayers and result in unaffordable bill impacts.

The Staff asserts that current trends will result in “costs for inaction.”³⁶ To the extent that there are current trends that will exacerbate existing high rates and prices for essential electric service, AARP and PULP would ask the Commission to identify those trends and specifically address them in this proceeding. However, the suggestion that these unnamed trends will somehow be ameliorated or disappear with the potentially costly additional new

³² Staff Straw Proposal at 30.

³³ Staff Straw Proposal at 30.

³⁴ Staff Straw Proposal at 30.

³⁵ Staff Straw Proposal at 30.

³⁶ Staff Straw Proposal at 31.

programs and mandates reflected in this Straw Proposal is not an observation or promise that appears to have any basis in evidence.

AARP and the Utility Project welcome the concern identified by the Staff with regard to the ability of low and moderate income customers to participate in REV markets. However, again, Staff relies on the structure and supervision of the REV markets to assume that customers who do not participate will still benefit, pointing to the potential for the generalized system benefits that might occur if peak load usage is reduced.³⁷ Once again the Staff's proposal fails to identify the criteria that will govern the development of REV and DER programs and future "markets" to ensure that the barriers associated with financial ability to participate as well as the accessibility of new programs for low and middle income customers will be overcome.

Furthermore, Staff's assumption that, "As increased DER product financing and service options emerge, low-income customers will have greater opportunities to participate"³⁸ is simply not credible. While some third-party solar PV finance companies may offer solar systems at no upfront cost, they do require evidence of credit worthiness and home ownership in order to justify the long term leasing arrangement in lieu of a full purchase of the system. There is substantial evidence that distributed generation and solar PV options are purchased and installed by households at the higher than average income level.³⁹ Furthermore, the dedicated efficiency programs available to low income customers is extremely small compared to the budgets and the expenditures for rebate programs and other more expensive home energy systems made available to those who can afford these investments.

The Staff's proposal that the utility DSP plans include proposals to "engage low and moderate income customers in the DSP market with low or no initial investment" is accompanied by a suggestion that the plans "may include basic service plans, bill relief options, and incentive programs, as available." There is no discussion of the nature of what is meant by a "basic service plan," a "bill relief option" or "incentive program." The lack of attention to describing the nature of the potential programs that must be included in utility DSP plans is a significant defect in the Straw Proposal.

SECTION III.C: COMMENTS ON DER PROVIDERS AND ESCOS

The Staff's Straw Proposal assumes that ESCOs and other DER providers will flood the market with products that customers will purchase and that ESCOs will "re-focus" their

³⁷ Staff Straw Proposal at 31. Such backcast estimates of wholesale market cost savings from a hypothetical peak-shifting rest upon assumptions that the wholesale market is perfectly competitive, that supply would not be reduced through withholding or mothballing, and that bidding of supply resources would be the same, i.e., that there would be no "supply response" to the "demand response" which could perpetuate peak pricing.

³⁸ Staff Straw Proposal at 31.

³⁹ A recent report by Barbara Alexander, An Analysis of State Distributed Generation and Renewable Energy Mandates on Low-Income Customers (September 2014) includes information from studies in Arizona, California, and New Jersey that confirm this observation and provides information on the cost of these mandates on electric bills for lower income customers.

business plans “for mass-market customers towards effective delivery of DER products and services.”⁴⁰ The basis for this assumption is not clear since there is no evidence that ESCOs either in New York or elsewhere offer DER products and services to their mass-market customers on a large scale. Nor does the Staff provide a citation to any evidence to support this conclusion.

However, of even more concern is the suggestion that this proceeding should be used to promote the ability to ESCOs to increase their market share to mass-market customers or perhaps even threaten to supplant the utility-provided default service. While AARP and the Utility Project do not object to allowing ESCOs or other DER providers to market their products to any utility customers, ratepayers should not be required to subsidize these competitive market activities or supplant the role of the distribution utility in providing safe, reasonable, and reliability utility services, including a stable and least cost default service. Furthermore, we oppose this objective on the grounds that the Commission oversight, consumer protection and licensing policies that current govern ESCO activity in New York are inadequate and have exposed residential customers to practices and prices that harm their ability to afford essential electric service. To adopt, as proposed by the Staff, policies that will promote ESCO market share and enable ESCOs and DER providers to interact with ratepayers on the regulated utility bill, and possibly relying on the utility to collect their unregulated charges, would be unreasonable prior to any resolution of the outstanding consumer protection policies applicable to ESCOs for the sale of commodity supply services.

Furthermore, AARP and the Utility Project agree with the Staff’s observation that DER providers who are not otherwise ESCOs must also be subject to supervision and appropriate consumer protections, but the Report appears to assume that the Commission could implement such programs without statutory reform. As a result, the Staff’s Proposal fails to recognize the necessity to seek and obtain sufficient statutory authority to remedy this defect. Staff offers no legal rationale or basis for concluding that the Commission would have the statutory authority to license or regulate third party DER providers who market and sell DER products and services and the Staff fails to identify the basis for any such authority. At a minimum, the Commission would need to identify or obtain clear statutory authority and sufficient internal resources to remedy this defect prior to implementing REV policies that promote or support DER activities in New York.

SECTION IV.B: COMMENTS ON BENEFIT COST ANALYSIS FRAMEWORK

This Staff Proposal includes a lengthy discussion that proposes to adopt a Benefit Cost Analysis (BCA) framework that will form the basis for a more detailed development of a BCA and that, once approved, will be used to consider all REV related proceedings, including rate cases.⁴¹ As a result, this proposal has significant implications on how proposed “REV” projects and proceedings will be considered for recovery of costs and potential impacts on residential customers. Furthermore, the Staff quotes from a recent rate case involving Con Edison in which the Commission stated that it intends to develop a comprehensive CBA that will govern

⁴⁰ Staff Straw Proposal at 33.

⁴¹ Staff Straw Proposal at 43.

all efficiency programs as well as REV related programs and investments.

AARP and the Utility Project urge the Commission to approach this exercise with extreme caution. If, as Staff proposes, there is a significant reliance on “social cost factors” relating to climate change, societal health and welfare, and hypothetical values assigned for the purpose of considering investments that will be paid by ratepayers, it is likely to result in the approval of significant direct costs and resulting bill impacts for residential customers. Indeed, the apparent purpose of including all of these externalities in the consideration of utility investments is to allow for the approval of investments and recovery of costs in regulated distribution rates that would otherwise not pass the usual CBA tests.

With regard to the benefits and costs identified by Staff in its discussion of the forthcoming CBA, AARP and the Utility Project propose two essential changes to the Staff’s proposal to better protect residential ratepayers.

First, any CBA should include an analysis of the proposed investments on direct bill impacts and affordability of service. The potential cost of REV related investments could be very significant, and New York customers already pay some of the highest rates in the Nation. The impact of cheaper natural gas on future electric prices is unknown and fraught with risks relating to pipeline capacity and transportation costs. The Commission should consider the impact of proposed REV investments and associated customer programs on the affordability of electric service for all customers, whether they participate in the proposed customer programs or not.

- The CBA should require the utility to include within their business case analysis an evaluation of the bill impacts associated with the cost of proposed investments for all customer classes and over the period during which the investments are proposed for recovery in rates.
- Bill impacts for the predicted REV investment costs should, when applicable, reflect low, average and high usage assumptions for each rate class.
- The utility should predict the bill impacts and timing of those impacts for its predicted benefits, both with respect to operational impacts on distribution services as well as impacts that the utility predicts will occur for generation supply prices.
- The Commission should require the utility to evaluate the bill impacts associated with REV investments in the context of known rate changes (including riders, fees and surcharges) that will occur due to other mandates and rate cases approved (or likely to occur) during the cost recovery period for the REV investments. In other words, the impact of REV investments on the customer bill should be evaluated in the context of all rising costs to the greatest extent practical – e.g. when the investment is designed to promote distributed generation projects, the CBA should include the cost to pay for policy programs such as net metering payments to customers that self-generate for the excess electricity they produce through rooftop solar.
- The Commission should require the utilities to evaluate the impact of REV investment costs to ratepayers on other benchmarks of affordability. These include whether the increased bills and costs due to REV investments would result in higher debt owed to the utility, higher costs due to increased incidence of nonpayment, more shutoff notices, the need for more customer contacts with payment plan negotiations and other contacts associated with disputed bills and attempts to avoid disconnection, increased

uncollectibles and bad debt, and increased rate reductions for the low income discount programs.

Second, any CBA should not allow for the inclusion of any estimated benefits that the utility cannot or will not assume responsibility for tracking and documenting that the benefit has actually occurred. The Commission should not allow utility to impose costs for ratepayers based on values that are not within the control or ability of the utility to measure and assure actual performance.

SECTION V.A.3: COMMENTS ON ENERGY EFFICIENCY WITH LOAD MANAGEMENT CONTROLS

The Staff proposes guidelines to govern the development of Energy Efficiency Transition Implementation Plans (ETIPs) as one early component of utility Distributed System Implementation Plans (DSIPs), discussed in the Implementation section of the proposal. According to the Staff, existing efficiency programs will be supplanted by alternative or expanded approaches and, “Funding for utility efficiency programs should also be transitioned, following the expiration of current surcharge authorization. Because efficiency programs will be integrated into normal utility operations, rather than being funded through a surcharge the funding should be recovered in the same manner as other operating expenses. This transition should be implemented in the next rate case for each utility. If a utility will not have a rate case completed prior to January 1, 2016, it should propose a cost recovery mechanism in its ETIP.”⁴² Furthermore, the Staff appears to assume that programs will be transitioned from NYSERDA to utilities themselves.

This is a dramatic change in how efficiency programs will be developed, implemented, and funded. Again, this is a significant policy change that requires far more public review and debate prior to reaching these conclusions as part of the REV proceeding. AARP and the Utility Project do not have specific recommendations in this regard because there are pros and cons with respect to the most effective way to develop and implement cost effective efficiency programs. While we do not object to the development of a more holistic and integrated approach, there are likely to be significant and controversial issues that will need careful consideration with regard to the design of the programs, the funding stream available to support the programs, the interaction with those who deliver the programs, the implications for design and delivery of the low income programs, as well as performance measures that must be in place to oversee the cost effectiveness and impact of these programs. It is unlikely that all of these matters could or should be resolved by 2016 as recommended by Staff. Again, the Commission should take a more measured approach.

SECTION V.B: COMMENTS ON DEMONSTRATION PROJECTS

AARP and the Utility Project support the Staff’s recognition that demonstration projects will be necessary to validate many DSP functionalities, particularly those that involve customer participation. However, we recommend several additional criteria to govern the

⁴² Staff Straw Proposal at 53.

development and approval of these projects.

- The Commission should require that any proposed DER program recommended by a utility with cost recovery from ratepayers be first evaluated with a well designed demonstration or pilot program that will obtain data about customer engagement, impact on usage, impact on peak load demand, and potential bill impacts with sufficient diversity of participation to distinguish differences among key demographics, such as income, age, housing type, and usage characteristics;
- Any utility that seeks to propose a demonstration project with recovery of costs from ratepayers should be required to obtain pre-approval from the Commission and include the basis for any assumption that the project, if successful, is likely to be cost effective if implemented on a larger scale; and
- The utility must agree that the recovery of the costs in a future rate case will be subject to documentation that the utility prudently implemented the demonstration project in light of the approved budget and implementation plan.

In addition, there are some statements in the Staff's discussion of customer acceptance of DER technologies and participation in DER provider offerings that should be clarified. According to the Staff, "Parties raise an ongoing concern that low-income residential customers will not be able to participate in DER programs or services that reduce energy bills and high-income residential customers will not be interested. However, there is a lack of data on customer participation generally in response to voluntary time of use pricing or other program services."⁴³ It is not clear whose comments the Staff has relied upon for these statements. It should be clear that low income customers are not financially able to participate in programs that require the purchase of additional technologies or investments due to lack of sufficient household liquid assets or income for "extras." In addition, there have been pilot programs that have sought to enroll low-income customers in voluntary time of use programs, some with less than anticipated success. This may be a function of concern about the potential of having to pay higher prices during certain times of the day or a function of other priorities in the household when presented with utility brochures and messages about optional programs. However, programs that target low income households with a credit or rebate for reducing usage during certain critical peak periods have been relatively successful.⁴⁴

In any case, any DER program or service that intends to seek low income household enrollment should ensure that these households are not required to pay for additional technology and devices and that the design of the program will result in bill credits or rebates in return for reducing usage rather than focusing on charging higher or punitive prices during certain times of day or year.

⁴³ Staff Straw Proposal at 57.

⁴⁴ See, *supra*, the RAP Report on Dynamic Pricing. It should be noted that the pilot programs reviewed in the RAP Report all require expensive and full-scale deployment of advanced metering, an initiative that is noted in the Staff's Straw Proposal as questionable for this reason. AARP and the Utility Project share this concern. For this reason, we recommend that the Commission focus on demand response programs that do not require advanced metering deployment, such as the BGE Peak Rewards program previously cited in our Comments.

SECTION V.F COMMENTS ON PLANNING REV IMPLEMENTATION

and

SECTION VII: IMPLEMENTATION

AARP and the Utility Project recommend that the Commission slow down the REV implementation process for all the reasons set forth in these Comments. This process is being implemented too fast, without sufficient consumer input and participation, and without consideration of the costs and bill impacts associated with the Staff's recommended mandates. Specifically:

- The Commission should identify and calculate the costs and bill impacts associated with the implementation of current reliability standards, efficiency programs, renewable resource mandates, decoupling mechanisms, and planned and approved investments to harden the current electric system infrastructure. These costs and bill impacts should be explicitly identified in a manner that documents how the REV policies and programs will avoid or lessen the impact of these costs and associated bill impacts.
- The Commission should not adopt any REV policies and programs that would be designed to pass through or closely align retail residential customer prices for essential electric service with short-term or spot market wholesale market prices. The Commission should reform its current default service policies to ameliorate such short-term price swings for generation supply service.
- The Commission should adopt its proposed reforms applicable to ESCOs and distribution utilities as set forth in its February 2014 Order in Docket No. 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), many of which have been stayed since April 2014.
- The Commission should avoid any conclusions about REV Track One policies until and unless there is a full airing and consideration of the facts, costs, and bill impacts associated with this initiative and identification of associated Track Two policies that are likely to adversely impact customer bills and rates.
- The Commission should evaluate the current efficiency programs, identify the defects in those programs, and investigate alternative design and implementation options and associated ratepayer costs and benefits prior to concluding that utilities should be ordered to create Transition Plans as recommended by the Staff or that the current cost recovery mechanism should be altered.
- Utilities should be required to consider and propose Distributed Service Implementation Plans that describe how the utilities has or will integrate DER programs and policies into its ongoing investment and maintenance plans, describe how the utility has integrated these plans into its proposed programs

and tariffs, and describe the locations and conditions under which cost effective DER programs should be implemented at the least cost, including cost effective demand response programs modeled on the Con Edison program.

- The Commission should require that any proposed DER program recommended by a utility with cost recovery from ratepayers be first evaluated with a well designed demonstration or pilot program that will obtain data about customer engagement, impact on usage, impact on peak load demand, and potential bill impacts with sufficient diversity of participation to distinguish differences among key demographics, such as income, age, housing type, and usage characteristics.
- Prior to any empowerment of third party DER providers or the expanded role of ESCOs with regard to DER programs and policies, the Commission should identify or obtain clear statutory authority and additional resources to implement the Staff's proposals with regard to registration, licensing, and consumer protection policies and regulations applicable to DER providers. This process will require proceedings to obtain public input and recommendations prior to their adoption.
- The development of any CBA should not exceed the statutory criteria for including costs in rates and include the additional reforms contained in these Comments concerning the need for an analysis of bill impacts, and relevant indicia of affordability.
- The Commission should not adopt an opt-out option for customers who do not want their customer specific usage and locational data released to any third party and affirmative customer consent prior to the release of that information should be continued;
- The Commission should reject any proposal to allow third parties to market and advertise its products on the regulated utility bill.
- The Commission should assess the impact upon non-participants and low-income customers of costs and revenue impacts of proposed initiatives which may be shifted to non participants through revenue decoupling or other proposed cost recovery mechanisms.

CONCLUSION

For all of the foregoing reasons, AARP and the Utility Project recommend that the Commission adopt our recommendations with respect to the Staff's Proposed Straw Proposal for Track One in this proceeding.

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Respectfully submitted,



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