Independent Power Producers of New York, Inc. (IPPNY)

194 Washington Avenue, Suite 315
Albany, NY 12210
phone: 518-436-3749
fax: 518-436-0369
www.ippny.org
Gavin J. Donohue, *President & Chief Executive Officer*

January 3, 2017

Via Electronic Delivery

Hon. Kathleen H. Burgess
Secretary to the Commission
New York State Public Service Commission
Empire State Plaza
Agency Building 3
Albany, N.Y. 12223-1350

Re: CASE 16-E-0622 – Petition of Consolidated Edison Company of New York, Inc. for Approval of a Pilot Program for Providing Shared Solar to Low Income Customers.

Dear Secretary Burgess:

Independent Power Producers of New York, Inc. ("IPPNY"), a not-for-profit trade association representing the independent power industry in New York State, hereby submits to the New York State Public Service Commission (the "Commission") comments in response to Consolidated Edison Company of New York, Inc.'s ("Con Edison" or the "Company") petition (the "Petition") for approval of a utility-based shared solar pilot program to provide Community Distributed Generation ("CDG") to customers participating in Con Edison's electric low-income program (the "Shared Solar Pilot Program").[1] Con Edison's proposed Shared Solar Pilot Program

[1] Case 16-E-0622, *Petition of Consolidated Edison Company of New York, Inc. for Approval of a Pilot Program for Providing Shared Solar to Low Income Customers* (Oct. 31, 2016) ("Con Edison Petition")

is premature, particularly as it relates to the Company's justification that the Program be structured using a "Universal Renewables" model, whereby Con Edison would conduct competitive solicitations that would allow third-party renewable developers to develop, design, build, and potentially operate renewable energy facilities, but, once in operation, ownership would be transferred to Con Edison.[2] For the reasons discussed herein, the Commission should reject Con Edison's petition for approval of a Shared Solar Pilot Program.

I. Background

On July 17, 2015, the Commission approved CDG in its *Order Establishing a Community Distributed Generation Program and Making Other Findings* (the "CDG Order"), which sought to open opportunities for low-income customer participation in CDG programs by identifying and soliciting solutions to barriers to such participation.[3] The Commission subsequently established a Collaborative to further examine ways to remove obstacles to low-income customer participation, and, on August 15, 2016, Department of Public Service Staff ("Staff") issued a report[4] (the "Collaborative Report" or "Report") summarizing its findings. The Collaborative Report identified two critical financial barriers to low-income customer participation but concluded that there were no workable solutions to overcome those barriers. Staff noted in its Report that low- and moderate-income customer participation in distributed energy resource ("DER") markets was one area in which there may be circumstances where a DER market is not developing that warrant utility investment. The Commission, in its Reforming

---

[2] *Id.* at 3.

[3] Case 15-E-0082, *Order Establishing a Community Distributed Generation Program and Making Other Findings* (July 17, 2015) ("CDG Order")

[4] Case 15-E-0082, *Staff Report on the Collaborative Regarding Community Distributed Generation for Low-Income Residential Customers* (August 15, 2016) ("Collaborative Report")

the Energy Vision ("REV") Track One Order,[5] adopted certain exceptions to its policy prohibiting utility-ownership of generation, ruling that utility-ownership of DER would be allowed under a number of limited circumstances, including when a project would "enable low- or moderate-income residential customers to benefit from DER where markets are not likely to satisfy the need."[6] Ultimately, Staff recommended that the Collaborative be disbanded and that future Commission action be addressed in an as-of-yet to be finished Staff whitepaper (the "Whitepaper") evaluating, among other things, "utility ownership of community distributed generation in order to ensure low-income CDG participation."[7]

It is on the preceding background that Con Edison has proposed its Shared Solar Pilot Program. With its Program, Con Edison intends to solicit a third-party to design, develop, and construct 3 megawatts ("MW") of solar generation, which Con Edison would then own, at a cost of $9 million, and, if customer response during the initial phase is favorable and benefits can be provided to participating low-income customers, the Company would proceed to build an additional 8 MW of solar generation for a total of 11 MW at an estimated cost of $33 million.[8] Con Edison asserts that it is necessary for the utility to step in and own DER because CDG and net metering programs are falling short of serving low-income customers, noting that, to date, "no CDG offerings have been provided to the low-income customer segment in Con Edison's service territory."[9]

[5] Case 14-M-0101, *Order Adopting Regulatory Policy Framework and Implementation Plan* (February 26, 2016) ("REV Track One Order")
[6] *Id*. at 70.
[7] Collaborative Report at 12.
[8] Con Edison Petition at 11.
[9] *Id.* at 2.

II. Argument

Con Edison's proposed Shared Solar Pilot Program is premature since the DER market is still in its infancy. Third-party developers have only had since the issuance of the Commission's CDG Order to propose CDG projects in what is a dynamic and uncertain regulatory environment. Such uncertainty is plainly highlighted by the Commission's recent order prohibiting energy service companies from selling electricity and natural gas to low-income customers in New York.[10] By Con Edison's own admission[11], the Shared Solar Pilot Program would rely on the currently unfinished, and therefore uncertain, framework being established by the Commission in the Value of Distributed Energy Resources Proceeding[12] ("Value of D Proceeding") to assign value to energy exports from DER. It remains to be seen how the market will respond when the Value of D Proceeding is concluded and when other fundamental questions actively being considered, such as how DER will participate and be valued in the energy and ancillary services markets administered by the New York Independent System Operator,[13] are answered.

Con Edison has acknowledged that a lack of CDG project proposals in its service territory is not unique to low- and moderate-income related projects. In fact, fewer CDG projects have been proposed in Con Edison's service territory than in the rest of the state precisely

---

[10] Case 12-M-0476, *Order Adopting a Prohibition on Service to Low-Income Customers by Energy Service Companies.* (December 16, 2016)
[11] Con Edison Petition at 2.
[12] Case 15-E-0751, *In the Matter of the Value of Distributed Energy Resources* ("Value of D Proceeding").
[13] See presentation on DER Roadmap at Market Issues Working Group meeting on December 19, 2016, by NYISO Staff, available at https://www.nyiso.com/public/webdocs/markets_operations/committees/bic_miwg/meeting_materials/2016-12-19/DER%20Roadmap%20Updates%20MIWG%20121916.pdf

because of Con Edison service territory related challenges such as cost of land and high rooftop rental rates. Con Edison notes that, while 1,314 MW of proposed CDG projects have been reported in statewide interconnection queues, there are just ten active CDG applications associated with 3 MW of total capacity in Con Edison's interconnection queues. Moreover, no projects, low-income focused or otherwise, are currently in service and nine projects, associated with 5.2 MW of total capacity, have cancelled their applications.[14] Despite what is clear evidence of CDG developers facing challenges across the service territory, Con Edison is proposing to build 3 MW of its own generation – an amount equal to all CDG projects currently in Con Edison's interconnection queues – on the premise that the lack of low-income focused CDG project proposals is indicative of barriers to entry exclusive to low-income focused projects. Not only is it impossible at this time to determine whether a DER market is developing or not, the evidence provided by Con Edison in its Petition may suggest the existence of broader barriers preventing CDG expansion in the area. Therefore, it is inappropriate to accept Con Edison's Petition for a Shared Solar Pilot Program on the basis that the DER market is not likely to satisfy a need for CDG for low-income customers.

The Commission's focus should be on developing and implementing a structure that will make it both feasible and economic for private developers to propose CDG projects for low-income customers. Private developers are not opposed to serving low-income customers, however, as noted by Con Edison, a major deterrent to developers pursuing low-income focused CDG projects is the likelihood that low-income participants will increase such a project's subscriber credit risk.[15] Con Edison's solution to this barrier is to request that the Commission

[14] Con Edison Petition at 9.
[15] *Id* at 9.

allow the Company to recover any costs not covered by the Shared Solar Pilot Program's revenues from all Con Edison customers via an adjustment mechanism.[16] On December 5, 2016, the Commission issued a notice soliciting comments to assist Staff in its development of the Whitepaper concerning utility-ownership of CDG for low-income customers.[17] Staff should consider in its Whitepaper a framework whereby support is provided to private developers of low-income focused CDG projects to overcome economic barriers. The question at hand, in the context of the broader REV initiative, should be how to find new and more efficient means of economic and credit support for distributed energy projects that meet the needs of New York's consumers, not how to lean on last century's blunt tool of utility generation ownership as the only means to accomplish public purposes.

For instance, the New York Green Bank administered by the New York State Energy Research and Development Authority is participating in a consortium of capital providers to arrange financing to expand residential solar opportunities for low- and moderate-income households.[18] Considering that the mission of the Green Bank is to work "with private sector market participants, implementing structures that address gaps and overcome barriers in current clean energy financing markets, and transforming those markets by enabling greater scale, new and expanded asset classes, and greater liquidity,"[19] the Commission should use the Green Bank to support private sector CDG project development for low-income customers. The point being that economic barriers to third-party projects can and should be alleviated through innovative,

[16] *Id* at 21.
[17] Case 15-E-0082, *Proceeding on Motion of the Commission as to the Policies, Requirements and Conditions for Implementing a Community Net Metering Program*. (December 5, 2016)
[18] See *Expanding Residential Solar Opportunities for New York Low and Moderate Income Households*, available at https://greenbank.ny.gov/Investments/Portfolio-and-Pipeline
[19] See *Mission*, available at https://greenbank.ny.gov/About/Mission

market based approaches that do not rely on antiquated utility cost-of-service rate-base regulation. That was the intention of the REV proceeding and should be the driving force behind all Commission decisions regarding DER market development. Rather than go down the path of approving cost-recovery for low-income customer focused utility projects, the Commission would be better served to make available to any third-party project addressing the low-income customer segment a financing mechanism for addressing project economics, such as through the Green Bank, consistent with the principles laid out in the REV Track One Order. Such an approach would ensure that projects are built at the lowest cost, while meeting the specific goal of serving low-income consumers.

It is important to note that the question of utility-ownership of DER under select circumstances is not a matter that has been fully settled. Outstanding before the Commission is a petition for rehearing and clarification of the Commission's REV Track One Order, which IPPNY supported.[20] As IPPNY has consistently demonstrated in the CES and other proceedings,[21] energy services should be provided cost-effectively by private developers on a competitive basis rather than by transmission and distribution utilities through rate-of-return regulation. This ensures that private investors, not captive ratepayers, bear investment risks, and that uneconomic projects, which may harm the private developers that must rely on competitive markets for their survival, are not developed. Prior to ruling on Con Edison's Petition, it would behoove the Commission to issue a rehearing on its REV Track One Order to reconsider its

[20] REV Track One Order, *Response to Petition for Rehearing and Clarification of Independent Power Producers of New York, Inc.* (June 15, 2015)

[21] See Case 14-E-0302, *Comments of Independent Power Producers of New York, Inc.* (Oct. 6, 2014), at 2–3, 14–15; REV Track One Order, *IPPNY Comments* (Sept. 22, 2014), at 6, 12–15; Case 14-M-0101, *IPPNY Comments* (July 18, 2014), at 8–16.

limited exemptions to allow utility-ownership of DER. If not, at a minimum, the Commission should wait to rule on Con Edison's Petition until Staff completes its Whitepaper.

Respectfully submitted,

/s/ Matthew Schwall

Matthew Schwall
Director of Market Policy & Regulatory Affairs
Independent Power Producers of New York, Inc.

cc: Active Parties