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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 15-E-0082 – Proceeding on Motion of the Commission as to the Policies, Requirements and Conditions For Implementing a Community Net Metering Program.

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 comments on the development of a White Paper by Department of Public Service ("DPS") Staff ("Staff White Paper") concerning Community Distributed Generation ("CDG") for low-income customers in response to the New York Public Service Commission's ("Commission") notice soliciting comments.[1] Among other things, the Commission requests feedback on Staff's consideration of utility ownership of CDG as a means to facilitate low-income customers'

[1] Case 15-E-0082 - *Notice Soliciting Comments Concerning Community Distributed Generation for Low-Income Customers*. (December 5, 2016)

participation in the deployment of distributed energy resources ("DER"). As IPPNY recently commented in 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*,[2] it is premature for the Commission to determine that a market is not developing for DER for low-income customers and, therefore, the Commission does not need to resort to utility ownership of DER.

I. Background

On July 17, 2015, the Commission approved a CDG program in its CDG Order,[3] which sought to open opportunities for low-income customer participation in CDG programs by identifying and soliciting solutions to barriers to such participation. The Commission subsequently established a collaborative proceeding to further examine ways to remove obstacles to low-income customer participation, and, on August 15, 2016, DPS Staff issued a Collaborative Report[4] 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 that low- and moderate-income customer participation in DER markets was one area in which there may be circumstances where a DER market is not developing that warrant utility ownership of DER. The Commission, in its Reforming the Energy Vision ("REV") Track One Order,[5] adopted exceptions to its policy prohibiting utility ownership of DER, ruling that utility ownership of DER would be allowed

[2] Case 16-E-0622, *IPPNY Comments.* (January 3, 2017).
[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)
[5] Case 14-M-0101, *Order Adopting Regulatory Policy Framework and Implementation Plan* (February 26, 2016) ("REV Track One Order")

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, DPS Staff recommended that the Collaborative be disbanded and that future Commission action be addressed in the Staff White Paper.

II. The Commission Should Allow More Time for a DER Market to Develop for Low-Income Customers

Utility ownership of CDG projects is premature because 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.[7] Developers must also rely on the currently unfinished, and therefore uncertain, framework being established by the Commission in the "Value of D" Proceeding[8] for assigning 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,[9] are answered.

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[6] *Id*. at 70.
[7] Case 12-M-0476, *Order Adopting a Prohibition on Service to Low-Income Customers by Energy Service Companies.* (December 16, 2016)
[8] Case 15-E-0751, *In the Matter of the Value of Distributed Energy Resources* ("'Value of D' Proceeding").
[9] 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

The Commission's focus, at this time, 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, not on how utility ownership of CDG should be structured. Private developers are not opposed to serving low-income customers. However, a major barrier to developers pursuing low-income focused CDG projects is, as noted in Staff's Collaborative Report, the likelihood that low-income participants will increase such a project's subscriber credit risk.[10] To overcome such barriers, Staff should consider in its White Paper 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.[11] 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,"[12] the Commission should use the Green Bank

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[10] Collaborative Report at 5-6.
[11] See *Expanding Residential Solar Opportunities for New York Low and Moderate Income Households*, available at https://greenbank.ny.gov/Investments/Portfolio-and-Pipeline
[12] See *Mission*, available at https://greenbank.ny.gov/About/Mission

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, market-based approaches that do not rely on antiquated utility cost-of-service rate-base regulation. That outcome 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 by making 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.[13] As IPPNY has consistently demonstrated in the CES and other proceedings,[14] 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 approach, which is a principle benefit of the competitive wholesale electricity market, 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

[13] Case 14-M-0101, *Response to Petition for Rehearing and Clarification of Independent Power Producers of New York, Inc.* (June 15, 2015)
[14] See Case 14-E-0302, *Comments of Independent Power Producers of New York, Inc.* (Oct. 6, 2014), at 2–3, 14–15; Case 14-M-0101, *IPPNY Comments* (Sept. 22, 2014), at 6, 12–15; Case 14-M-0101, *IPPNY Comments* (July 18, 2014), at 8–16.

markets for their survival, are not developed. Therefore, it would behoove the Commission to issue a decision on rehearing of its REV Track One Order to reconsider its limited exemptions to allow utility ownership of DER. If not, then at a minimum, DPS Staff should examine in its White Paper ways to develop and implement a structure that will make it both feasible and economic for private developers to propose CDG projects for low-income customers.

Respectfully submitted,

/s/ Matthew Schwall

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

cc: Active Parties