

# Citizens for Local Power

## **Response to the Staff Straw Proposal, Case 12-M-0101**

Submitted: September 22, 2014

The DPS Staff Straw Proposal for Track 1 Issues (CASE 12-M-0101) outlines a bold and unprecedented vision for reforming the utility system. This comprehensive new vision comes at a timely and critical juncture, when urgent action is needed to address the climate crisis, as well as New York's aging infrastructure. New York currently has many MWs of generation facilities more than 40 years old and an estimated \$30 billion needed to support transmission in the next decade. Rather than sinking investments into the energy system of the past, the DPS Straw Proposal outlines the investment to be made now in the energy system of the future, one based on clean, distributed energy resources.

CLP applauds these efforts. Outlined below is our response to the Straw Proposal, offering comments and suggestions to help improve the implementation of this bold new vision, and we greatly appreciate the opportunity to participate in this process.

Our comments focus largely on the costs and risks associated with having the utilities act as the Distributed System Provider (DSP) as well as being permitted to own renewable assets. We strongly encourage the creation of a Statewide Independent DSP. Whatever form the DSP takes, it is critically important that it provide a truly competitive market platform that allows for the kind of innovation and investment that has not yet been developed; for this is the innovation we need for the energy system of the future. With regard to the ownership question, we do not see any advantage or benefit to utilities getting into the renewable business, either for customers or for markets for renewable energy. We suggest a number of initiatives the PSC could take to achieve the goal of expanding renewable energy in New York, in addition to the many promising changes proposed in the REV.

We also strongly support the Straw Proposal's attention to the potential of enhanced customer engagement through Community Choice Aggregation (p. 27). CCA has the potential to take on many of the roles of DSP in implementing DER products and services.

## I. Context and Overview

• **Synching the REV process.** The viability of reforms called for in Track 1 depends in critical ways on decisions that have been postponed to Track 2. This applies especially to benefits and costs. Track 2 is tasked with “monetizing, in manageable transactions, a variety of system and social values” and devising “ratemaking reforms that will push utilities to enable the market transformations described in [the] proposal.” A serious weakness of Track 1 is that by deferring the discussion of benefits and costs to Track 2 it fails to define the “system and social values” it seeks to implement. As a result, the objectives of the DSP are not defined and it is impossible to gauge the effectiveness of the project as a whole.

Second, Track 1 recommendations will be adopted and implemented without a clear understanding of the costs of those recommendations, the distribution of those costs, and impacts on ratepayers, particularly low-income rate-payers.

Third, and critically, without the right incentives in place from the start, utilities will not be motivated to implement REV recommendations to the fullest. For instance, in the initial phase of REV implementation, utilities are being asked to determine which of their capital projects are likely candidates for deferral or avoidance through DER procurement; however, if utilities continue to earn a regulated rate of return on capital investments and are not required to meet REV performance objectives, what incentive do they have to shelve capital projects? CLP recommends that Track 1 and Track 2 recommendations be implemented simultaneously and not sequentially so that utilities are properly motivated and the Commission has the information it needs to ensure the success of the initiative.

• **Setting clear goals for system adaptation and DER development.** We agree with other organizations’ emphasis on setting clear numerical objectives whose results are measurable and must be met, including the goals of a 50% reduction in greenhouse gas (GHG) emissions by 2030, and an 80% reduction in GHG emissions by 2050, and the goal of meeting 20% of projected demand through energy efficiency by 2025. It is essential that we meet or exceed these goals. Utilities and energy supply companies should be required to meet renewable performance standards, as discussed later in these comments. Additionally, targets should be set for improving grid efficiency and reducing peak load through transmission and distribution (T&D) improvements and demand response and management, including storage. Incentives that increase utilities’ income should be structured so that, while rates may increase, overall customer bills do not. Lastly, the objectives articulated in Regional Sustainability Plans should also be incorporated into planning by utilities.

• **Capital investments should serve DER.** The Straw Proposal does not specifically speak to capital investments by utilities, yet decisions about these investments will have

an enormous impact on meeting REV objectives. Utilities must be encouraged, possibly through performance-based incentives/disincentives, to prioritize and schedule investments in such efficiency and reliability improvements as distribution automation, reconductoring, and voltage variation optimization, as well as projects that directly support significant expansion of renewable generation, while avoiding transmission investments in which DER investments offer a viable alternative.

- **Natural gas is not clean.** The Straw Proposal identifies New York’s accelerating dependence on natural gas for electricity as a trend of concern that the REV initiative seeks to address (pp.7-8). CLP strongly agrees that this is a major concern and supports the REV’s objective to reduce this dependence through diversification of the State’s energy portfolio. In view of the environmental damage that results from fracking and the volatility of natural gas prices, with attendant price spikes, natural gas should not be considered either “clean” or economical. N.Y. already uses gas in almost 50% of its power generation (6% gas and 39% gas and oil in 2012, according to the *NYS Gold Book*). Reductions of greenhouse gases can be achieved through more efficient use of existing gas generation facilities (for example through CHP). However, investments in new gas generation plants and gas pipelines should be avoided, as they will only increase our dependence on this fossil fuel and expose the state to more price volatility, since natural gas cannot be conveniently stored and as a result, high demand drives prices up very quickly (rate-payers are intensely aware of the “price spikes” that occurred during the winter of 2013/14). As renewable sources become more cost-effective and economically competitive, investments in gas infrastructure risk turning into “stranded assets” for which rate-payers will have to continue to foot the bill.

- **The need for a comprehensive approach to New York’s energy markets.** While understandable, given the scope of changes envisioned by the REV, the singular focus on electricity to the neglect of heating and transportation leaves out much of the State’s energy consumption. (According to the Department of Environmental Conservation, electricity generation and transmission account for about one-third of New York’s GHG emissions, while transportation accounts for another third, and heating and other uses account for the rest.<sup>1</sup>) In the very near future, the REV should extend to the PSC’s jurisdiction over gas heating, with the goal of reducing overall need through energy efficiency and increased use of renewable energy. There was also a missed opportunity in this process to explore options for expanding the electric vehicle (EV) market in New York, and to ensure that the transition toward a greater reliance on electric vehicles increases grid reliability rather than posing further challenges to it. Adoption of EVs could increase the need for electricity, thus working against the reductions created by successful DER. This could also lead to increases in peak load. Decisions that are made on the location and pricing policy of charging stations will decide whether EVs

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<sup>1</sup> [http://www.dec.ny.gov/docs/administration\\_pdf/irchap3.pdf](http://www.dec.ny.gov/docs/administration_pdf/irchap3.pdf), 3-12.

contribute to peak loads, or can be used as storage to help reduce peak loads. Here, planning is key, and must include close attention both to the development of the EV market in New York, and to the creation of charging stations—with possible incentives for placement of charging stations where they will best complement the development of renewables.

- **Storage.** The Straw Proposal identifies the significant role of storage, which is key to achieving REV goals. As noted on page 71, other states such as California have included major incentives for storage in their energy planning. Further attention should be brought to the potential of solar + storage, as it is a potential game-changer in the energy business. It was cited by Barclay’s in its decision, in May 2014, to downgrade the entire U.S. utility sector.

- **Strengthen public participation.** The REV process is hampered by the inability of the public and all stakeholder groups to participate fully, and the discourse is dominated by industry. As part of REV reforms, intervenor funding should be made available to Parties in all rate cases, so that the public is adequately represented and the voices of community groups, low-income groups, and other important stakeholders can be effectively heard. The success of the REV in meeting its objectives will depend upon wider participation and input than has been the norm in past proceedings. CLP also reiterates its call for a Citizens Utility Board with proper resources to advocate on behalf of consumers.

### **III.A. Identity of the DSP Provider**

- **CLP believes that the short-term convenience of relying on the utilities as the (perhaps initial) DSP is far outweighed by the inherent risks of such an approach.** Many parties to the REV, who represent very different interests and concerns, are united in the view that a utility-controlled DSP would ultimately work against the goals of the REV, including ESCOs like Direct Energy and Infinite Energy, major energy users like NUCOR Steel Auburn and Walmart, and environmental NGOs.<sup>2</sup> Even NYISO, which does not take a position for or against utility-as-DSP, nonetheless suggests that an independent DSP would be preferable:

“Working closely with utilities, DERs, new technology providers, and consumers, an independent DSPP would have the ability to look forward and anticipate the evolving reliability and technological needs of New York without being constrained by other business lines an incumbent utility may have.”<sup>3</sup>

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<sup>2</sup> This conclusion is based on review of earlier comments on Staff’s eight policy questions.

<sup>3</sup> NYISO comments, RE: Case 14/M/0101, July 10, 2014: p.6.

The Straw Proposal clearly recognizes the dangers of market distortion and manipulation inherent in having the utilities serve as the DSP, devoting an entire section (one-tenth of the entire document, pp. 67-75) to possible mechanisms for “Mitigating Market Power.” Utilities’ market power cannot, however, be effectively mitigated by incentives and standards, and it is unrealistic for the Public Service Commission to monitor every DSP decision and transaction to ensure a level playing field.

As already noted, regulated monopolies are not innovative, and by nature, crowd out competition. The Staff Report does not describe the specific incentives or standards, which could be quite costly, that might be implemented to help utilities overcome these substantial barriers and achieve the objectives of REV. As a result, it is impossible to judge the soundness of a utility-based DSP when it comes to creating an innovative, competitive marketplace. Staff’s proposals for a utility-owned and -operated DSP platform do not effectively address the significant barriers (pp. 67-75) such a structure would face in implementing the REV’s vision of widespread DER products and services.

It’s also unrealistic to propose that the utilities serve initially as the DSP, as recommended in the Staff Report, noting that “if it becomes apparent that utilities are failing to meet the Commission’s objectives, an independent DSP could be considered....” (p. 22). Once the DSP is set up as a utility function, it could become extremely costly and difficult to set up another entity down the road, and then transfer DSP responsibilities to it. Institutions, once created, have stubborn lives and tend to remain in place whether or not they meet the objectives for which they were originally established.

A greater exploration of the appropriate structure of the DSP is necessary.

· **Creating a Statewide Independent DSP at the outset is essential.** CLP supports the creation of a Statewide Independent DSP as the best way to reduce the tendency of utilities, in their role as regulated monopolies, to discourage other market participants. Equally important, a state-wide platform will best enable the development of a state-wide energy system and market. An independent entity will better ensure technology standardization, will simplify evaluation and tracking of DSP activities, and will make it easier to impose rules and adjust to changes in outside conditions and opportunities. It will also make the energy market in New York considerably more attractive to potential investors in DER. The fact that NY has a single ISO is mentioned as a condition of REV’s feasibility in NY. The PSC should build on this insight to create a Statewide Independent DSP. A state-wide approach will both support the development of DER initiatives that have state-wide implications and benefits, and facilitate investment in New York.

· **The creation of a truly distributed utility system can best be accomplished by involving the people it is designed to serve.** The Independent DSP should have a Board

of Directors made up of representatives of stakeholders, with representation from New York's public interest community, as well as representation from business, utility, PSC, NYISO, etc. The Board should include at least one grassroots environmental/energy group and one environmental justice organization. It should have an Executive Director and highly skilled technical staff who report to the Board.

One of the main arguments the Staff Report makes against the case for an independent DSP is the significant costs of separating grid management and market functions without any indication of what those costs might be. Sonoma Clean Power, the Community Choice Aggregator (CCA) in Sonoma County, CA, provides evidence to the contrary. The cost of sharing the necessary data regarding real-time, grid management needed to implement DER resources was approximately \$27,000.

The Straw Proposal identifies key functions of the DSP and claims that the majority of them are already being performed by the utilities, but the chart on p. 20 shows that many significant ones are not, particularly market functions. Utilities could be directed to work with a Statewide Independent DSP to share information and provide the necessary data at cost in order for a Statewide Independent DSP to oversee and implement key market functions.

### **III.B.1. Customer Engagement. Data Access and Privacy**

. **Importance of access to data.** CLP supports Staff's recommendation that the Commission "adopt rules toward making distribution system data and customer usage data available to market participants, and should launch an information and data exchange to enable that," and supports the recommendation that this be done now rather than in the transition phase. It is of critical importance that these rules respect individual privacy and protect consumers from the kind of predatory behavior that we have already witnessed by energy supply companies.<sup>4</sup>

### **III.B.2. Customer Acceptance**

. **One of the promising tools cited by Staff (p. 27) for facilitating customer engagement and acceptance is Community Choice Aggregation (CCA),** which CLP strongly supports. CCAs are community-wide aggregation programs for procuring energy supply and financing local investment in renewable energy, energy efficiency, and other DER products and services. CCAs purchase power and can use revenue bonds and tax equity to finance behind-the-meter energy efficiency, demand response, storage, renewables, and distributed generation, in addition to larger local grid-connected renewable power facilities.

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<sup>4</sup> See comments of Citizens for Local Power in Case 14-M-0101, July 18, 2014.

Over 1,000 U.S. municipalities in six states participate in CCAs, serving populations as small as 50 and as big as major cities like Chicago, Cincinnati, and San Francisco. In the 20 years since they have been in existence, CCAs have proven to be reliable and capable of delivering greener power at competitive prices, while also providing a high level of community engagement in energy decision-making.

### **III.B.3. Affordability**

- **Low-income customers**. REV principles should include goals of social, racial, economic equity and community involvement. Currently, this is done by sequestering a portion of utility budgets and directing it toward the support of customers who have trouble paying their bills. The PSC should also adopt a proactive policy of directing support toward the creation of DER in poor neighborhoods, including aggressive energy efficiency improvements to rental buildings and community renewable energy projects that can benefit renters. In order to ensure that low-income customers are adequately protected in New York's revamped energy system, they must be adequately represented in all rate cases and REV-related proceedings.

### **IV.B.1-4. Benefit Cost Analysis Framework Parameters**

- This question is at the heart of the REV process. We strongly support the inclusion of proper cost benefit factoring into the tariff proceedings, and agree generally with the approach proposed by Staff on pp. 43-44, where the Straw Proposal cites the PSC's expectation, expressed in a recent Con Ed rate case decision, that assessments of future capital investments will account for "the risks and probabilities of future climate events, the expected useful life of assets, the impact of outages of varying duration on affected customers, and the potential risk to critical facilities, among other societal cost factors." Cost-benefit analysis should also include considerations of overall grid efficiency, system resilience, peak load reduction, and environmental sustainability. There are a number of well-developed valuation systems available to guide the Track 2 review of tariff regulations and the Energy Efficiency Portfolio Standard (EEPS) proceeding that is also currently underway. The Minnesota Value of Solar Tariff (VOST) and the Rocky Mountain Institute's Electricity Distribution Grid Evaluator (EDGE) process include, along with life-of-the-resource values for depreciation (i.e. 25 years for solar), such measures as the amount of savings through reduction in utility generation, peak reduction, and grid relief. Like VOST, the benefit-cost analysis must incorporate the EPA's 2013 Social Cost of Carbon values. It is critically important that costs and benefits be internalized from the outset of REV reforms, and the PSC should immediately initiate its proposed stakeholder process, with the goal of adopting a valuation system as soon as possible.

## V.A.2. Supply-side Renewable Resources

- **Strengthening the Renewable Portfolio Standard (RPS) and incentives.** CLP strongly concurs with Staff that “it is more important than ever to continue to support the development of large-scale renewables in New York” (p. 52. New York is currently not on target to achieve its RPS of meeting 30% of retail electricity need from renewable sources by 2015. To ensure that New York more fully diversifies its energy portfolio and is on track to achieve the goals of a 50% reduction of carbon emissions by 2030<sup>5</sup> and an 80% reduction by 2050, CLP calls for ensuring that a fixed percentage of the RPS be met by procuring solar energy, and that all renewable energy be sourced in-state. CLP also supports the introduction of incentives that reward utilities and other energy aggregators and suppliers for reaching or exceeding specific goals. These measures should be accompanied by rigorous oversight procedures that include annual or biannual reviews and penalties for failure, as other states are doing.

## V.F. Planning REV Implementation

- **System-wide planning should NOT be left to the utilities alone.** CLP supports the coordinated stakeholder processes outlined by Staff on DSP technical platform design and market design, and further recommends that the PSC move to establish an Independent State-wide DSP. An independent entity will more efficiently meet state-wide goals, facilitate investment and oversight, and enable the “system-wide integrated planning” on which the success of the REV reforms ultimately depend.

## VI. Mitigating market power.

- **Question Staff’s rationale for utility-owned DER.** CLP believes that the reasons put forward to permit utilities to own renewable generation and storage are not compelling enough to warrant ownership under even limited circumstances. The potential costs of this policy change would far outweigh the benefits, most of which are questionable to begin with. Staff arguments and rebuttal follow:

### **1) Staff argues that utilities should have DER ownership because they are well-positioned to accomplish or at least contribute to expeditious growth in DER penetration of the New York energy market (p.68)**

The argument is essentially that utilities’ monopoly advantages (access to customers, access to data, ability to leverage rate-payer funded access, economies of scale, etc.) best position them to catalyze investments in DER, but these very same advantages will stifle growth of these markets by undermining competition. The biggest obstacles to expanded renewable generation have been regulatory or policy-related: the low net-metering cap,

the absence of a policy allowing virtual net-metering and shared renewable energy, and the high standby rates and interconnection fees and costs that utilities are permitted to impose. Remove these barriers and market penetration of distributed renewable resources will take off. Even with these barriers, investments in solar energy have been growing enormously in New York, thanks in good part to the NY Sun Initiative. More solar has been installed in the first two years of this initiative than in the entire previous decade. There is no need to jump start investment in distributed renewable energy with utility ownership. It is already happening, and will continue to grow with broad participation and the right mix of policies and incentives initiated by the REV.

**2) Staff argues that utility ownership would facilitate the planning process (p.69)**

The utilities do not need to own distributed renewable assets to understand how to plan for their integration into reliability planning and dispatch. NYISO has been perfectly capable of serving a similar planning function at the wholesale level without any ownership of generation resources. (In fact, its Board members are forbidden from having any ties to energy suppliers, as should be the case with the DSP.) As noted by Staff elsewhere in the Proposal, utilities already have the knowledge and experience with T&D to know where DER resources can be best integrated—this is one of Staff’s central justifications for assigning utilities the role of DSP. There is no need for utilities to build up their “experience and confidence” through ownership of renewable assets. Actually, their ownership of generation assets is more likely to *distort* the planning process.

**3) Staff argues that direct ownership of DER by a utility can reduce the risk of revenue erosion (ibid.)**

Since utilities depend on selling electricity for cost-recovering revenue, the concern is that, with the continued increase in energy efficiency and behind-the-meter generation, the revenue base of utilities will not be able to recover the costs of operating and maintaining transmission and distribution. This concern is not compelling enough to warrant utility ownership of renewable assets. First, future revenue trends are far from clear: For example, as the market for electric vehicles grows, the demand for electricity will also grow, and could easily off-set the decline in revenue associated with the expansion of DER in the future. Second, the REV initiative could easily create other new revenue streams for utilities (some of which are listed on p.15, including pricing and billing services, metering information services, and data sharing services). CLP supports moving to a performance-based model of rate-making that rewards utilities for meeting REV goals, including reducing carbon emissions and consumer bills. CLP also supports a role for utilities in offering a limited number of demand response services to customers, as well.

• **The risks of utilities owning generating assets are great and the benefits are unconvincing.** The rationale for allowing utilities to own generating assets is not strong, and the risks of such a policy are significant, including squelching competition, encouraging inefficient investment, discouraging innovation, and increasing the costs to consumers—all the costs generally associated with monopoly power.

• **Mitigation proposals offered by Staff are not sufficient to address the risks.** The straw proposal calls for limiting generation and storage projects to utility property, while also opening the door to *any* project, as long as it is included in an approved implementation plan. The conditions for project approval are general and broad, and will not prevent utilities from using their monopoly advantages to limit competition in the renewable energy market. It would not be too difficult for utilities to justify a proposal based on “substantial system need,” as long as the project is located within load zones that currently face constraints. The Straw Proposal states that Track 2 will structure incentives to make utilities either indifferent to ownership or favor ownership by third parties. It is not at all clear that this can be accomplished through incentives, and if this is the goal, it makes more sense to maintain the current policy forbidding utility ownership of generating assets.

It is of particular concern that the Straw Proposal not only allows utilities to own generation resources but also puts them in charge of managing the markets for and dispatch of those resources. This is a monopoly’s dream.

## **VI. B. Interconnection.**

• **Prevent excessive costs for interconnection.** CLP strongly agrees with the need to address excessive interconnection costs (p.32). Utilities must not be allowed to overprice interconnection based on their monopoly position. A process needs to be established where third-party bids are considered and can be accepted (subject to PSC oversight). As an example of utility overpricing, we cite case 89-T-139, JMS Selkirk, Inc., in which the PSC allowed physical bypass of the Niagara Mohawk gas system in a situation where the utility’s marginal cost exceeded the cost of the bypass, rather than allow the utility to charge rates that did not recover its marginal costs in an effort to retain the load. CLP is acutely aware of the fact that many municipalities, in particular, have landfill sites that are PV-ready but which they cannot afford due to the utilities’ estimated cost of interconnection. There needs to be a way around this dilemma and an accessible way to resolve such disputes in order to facilitate integration of large-scale renewable energy resources.

## **VII. A-E. Implementing REV. Findings and Implementation.**

CLP supports the near-term “no-regrets” actions called for by Staff, with the exception of the following:

- . **Let experienced experts create web-based tools.** The Straw Proposal calls on the utilities to immediately begin designing and developing “web-based tools to enable customers to shop for, and purchase, DER and other energy-related value-added services,” but the utilities have no particular expertise in this area. These tools will be *key* to customer engagement, and their development should benefit from the right kind of expertise. CLP recommends that the PSC should oversee a competitive bidding process for work by companies specializing in web design and marketing.

**Below are additional policy steps that the PSC can immediately take to advance REV goals:**

- . **Raise the net metering cap to 15% immediately (the same cap adopted by the state of Vermont) and phase the cap out entirely as the introduction of DER takes hold.** Rules limiting the amount of power that can be returned to the grid should also be removed or phased out for generators under 1 MW. Utilities should use their marketing capabilities to promote NY Sun on both the main tier and the customer-sited tier sides.

- . **Allow virtual net-metering and shared renewable energy** to vastly expand access to the benefits of renewable energy by people without appropriate sites as well as by renters, and low-income groups, while also allowing targeted reductions within communities.

- . **Address barriers posed by standby rates and interconnection costs.**  
See above, p. 10.

- . **Mandate utilities to exemplify best practices in their own activities.**