



August 6, 2018

VIA ELECTRONIC FILING

Hon. Kathleen H. Burgess
Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

Re: Case 15-E-0751 – In the Matter of the Value of Distributed Energy Resources

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

Matter 17-01276 – In the Matter of the Value of Distributed Energy Resources
Working Group Regarding Value Stack

Dear Secretary Burgess:

Pursuant to the *Notice Soliciting Comments on Staff Proposal and Related Matters* issued by the New York State Public Service Commission on May 22, 2018, in the above-referenced proceedings and matter, Multiple Intervenors hereby submits the attached Comments in response thereto. Copies of the attached Comments are being served herewith on the active parties to these proceedings and matter.

Respectfully submitted,

MULTIPLE INTERVENORS

Michael B. Mager

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Counsel to Multiple Intervenors

MBM/dp
Attachment

cc: Active Parties (via E-Mail; w/Attachment)

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**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

**In the Matter of the Value of Distributed Energy
Resources**

Case 15-E-0751

**Proceeding on Motion of the Commission as to the
Policies, Requirements and Conditions For
Implementing a Community Net Metering Program**

Case 15-E-0082

**In the Matter of the Value of Distributed Energy
Resources Working Group Regarding Value Stack**

Matter 17-01276

**COMMENTS
OF
MULTIPLE INTERVENORS**

Dated: August 6, 2018

**MULTIPLE INTERVENORS
540 BROADWAY
ALBANY, NEW YORK 12207**

PRELIMINARY STATEMENT

Multiple Intervenors, an unincorporated association of approximately 60 large industrial, commercial and institutional energy consumers with manufacturing and other facilities located throughout New York State, hereby submits its Comments in response to the *Notice Soliciting Comments on Staff Proposal and Related Matters* (“Notice”) issued on May 22, 2018, by the New York State Public Service Commission (“Commission”) in Cases 15-E-0751 and 15-E-0082, and Matter 17-01276.¹ In the Notice, the Commission solicits comments on, *inter alia*, a document prepared by New York State Department of Public Service Staff (“Staff”) entitled, *Staff Proposal on Value Stack Eligibility Expansion* (the “Proposal”). The Notice also seeks input on two additional issues not addressed in the Proposal.

In evaluating the recommendations advanced in the Proposal and other issues in this proceeding, Multiple Intervenors continues to advocate that distributed energy resources (“DER”) should be facilitated, but not subsidized. The Commission should seek to address artificial barriers to DER penetration, and ensure that DER projects are compensated in an equitable manner for the economic value they actually provide to the electric system. By the same token, however, the Commission should not resort to artificial machinations that provide DER owners and/or developers with excessive compensation at the expense of non-participating customers, who already are funding a litany of other, very-expensive, discretionary programs. Moreover, the Commission should rely upon policies and valuation methodologies that are

¹ Cases 15-E-0751, *In the Matter of the Value of Distributed Energy Resources*, and 15-E-0082, *Proceeding on Motion of the Commission as to the Policies, Requirements and Conditions For Implementing a Community Net Metering Program*, and Matter 17-01276, *In the Matter of the Value of Distributed Energy Resources Working Group Regarding Value Stack*.

technology neutral, and refrain from placing its thumb on the scale in transparent attempts to pick winners and losers.

For purposes of these Comments, Multiple Intervenors first will respond to the Staff Proposal in the order that recommendations are advanced therein, and then will respond to the two issues for which input was solicited in the Notice.

ARGUMENT

Multiple Intervenors' Comments are organized into two sections. The first section responds, in order, to the recommendations advanced in the Staff Proposal. The second section comments on the issues raised in the Notice.

A. Comments in Response to Proposal

1. Principles for Eligibility Expansion

Staff's first recommendation in the Proposal relates to eligibility for Value Stack compensation. Staff identifies the following eight principles that should guide eligibility and compensation treatment: (1) Practicality; (2) Ripeness; (3) Environmental Impacts; (4) Non-Participant Cost Impacts; (5) Technology Neutrality; (6) Value-Based Crediting; (7) Electricity Injection Focus; and (8) Market Transition Credit ("MTC") as a Transitional Element. (Proposal at 2-3.) Multiple Intervenors' comments on these proposed principles are set forth below.

Multiple Intervenors partially agrees, and partially disagrees, with the first principle, Practicality, which Staff defines as: "Inclusion of the technology or project type must not require any changes to the definition or calculation of existing Value Stack elements." (Proposal at 2.) Such principle appears reasonable in the short-term, but too restrictive in the longer-term.

The fact that a certain form of DER may necessitate modifications to the definition or calculation of existing Value Stack elements might be sufficient grounds to delay Value Stack compensation in the near-term, because resources are limited and the resolution of issues should be prioritized. Further, the potential need for such modifications with respect to one form of DER arguably should not unduly delay eligibility for Value Stack compensation for other forms of DER.

That being noted, the fact that a form of DER may require modifications to the definition or calculation of existing Value Stack elements does not mean it should forever be ineligible for Value Stack treatment, or that such eligibility should be delayed unduly.

Multiple Intervenors agrees with the second principle, Ripeness, which Staff defines as: “The factual record must be sufficiently complete to provide a basis for decision.” (Proposal at 2.) Importantly, however, Multiple Intervenors contends that the factual record in this proceeding is extremely limited, if not non-existent. Presentations or positions advanced in collaborative meetings, with no record of statements made, answers to questions, etc., certainly do not constitute an evidentiary record. It is not clear exactly what is in or outside of the “factual record” alluded to by Staff.

Multiple Intervenors continues to oppose forcing non-participating customers to pay compensation to DER owners and/or developers for environmental externalities, as well as the calculation of such compensation, and, therefore, does not support the third principle, Environmental Impacts. (See Proposal at 2-3.)

For its fourth principle, Non-Participant Cost Impacts, Staff recommends that: “Any potential utility net revenue impact, and therefore potential non-participant cost impact, if applicable, should continue to be subject to the tranche system approved in the VDER Order.”

(Proposal at 3.) In response thereto, Multiple Intervenors contends that the Commission (and Staff) need to act much more aggressively to minimize non-participant cost impacts relating to this proceeding. Customers already are being forced to fund a litany of discretionary programs that are not needed for the safe and reliable provision of electric service, including, but not limited to: (a) \$5 billion or more towards the Clean Energy Fund; (b) subsidizing selected nuclear generation facilities under the Clean Energy Standard (“CES”), estimated to cost well in excess of \$6 billion; (c) subsidizing new renewable generation facilities under the CES at an estimated cost well into the billions of dollars and possibly into the tens of billions of dollars; (d) subsidizing existing renewable generation facilities under the CES, including facilities that previously were subsidized under the Renewable Portfolio Standard; (e) utility-administered energy efficiency programs of increasing cost; (f) Earnings Adjustment Mechanisms to be paid to utility shareholders over and above Commission-approved revenue requirements; (g) new Offshore Wind subsidies of substantial (but unknown) magnitude; (h) a new initiative to subsidize storage investments; and, possibly, (i) a proposal to implement carbon pricing into the State’s wholesale energy markets.

The ability of non-participating customers to fund an ever-increasing litany of policy initiatives, with ever-increasing aggregated rate and price impacts, should not be assumed.

Multiple Intervenors agrees with and supports the fifth principle, Technology Neutrality, which Staff defines as: “The compensation for resource injections should be based on the specific values provided, rather than on technology designation (while at the same time recognizing that specific technologies may provide different values).” (*Id.*) Multiple Intervenors encourages the Commission and Staff to practice Technology Neutrality, starting with this proceeding and the equitable treatment of combined heat and power (“CHP”) projects (*see infra*).

Multiple Intervenors agrees, in part, with the sixth principle, Value-Based Crediting, which is defined as: “Each element of the Value Stack should reflect an actual value to the system and society and a reasonably accurate calculation of that value.” (*Id.*) Multiple Intervenors agrees insofar that the Value Stack should provide DER compensation based on the actual value provided to the electric system, but disagrees that electric customers should be forced to fund through higher utility rates certain societal benefits for which no “reasonably accurate calculation of that value” has been demonstrated to exist.

Multiple Intervenors agrees with and supports the seventh principle, Electricity Injection Focus, which states that: “Each element of the Value Stack should have a direct relationship to the production and injection of electricity to the grid.” (*Id.*) Relatedly, compensation should be based on a DER facility’s actual performance, factoring in not only the total amount of injections, but the value of when and where they are made.

Finally, Multiple Intervenors agrees, in part, with the eighth principle, MTC as a Transitional Element, insofar as Staff recommends “resources that were not eligible for [net energy metering (“NEM”)] should not be eligible for the MTC.” (*Id.*) Multiple Intervenors previously opposed the adoption of the MTC as a blatant subsidy payment extracted from non-participating customers and, therefore, certainly supports the principle that it should not be expanded here.

2. Proposed Removal of Customer-Type-Based Technology and Size Limits

In this section of the Proposal, Staff: (a) indicates that NEM previously was limited to certain technologies, and certain project sizes by technology, depending on customer type; and (b) opines that while such limitations were appropriate under the prior compensation

methodology, they may no longer be appropriate given Value Stack compensation. (Proposal at

4.) Based on the foregoing, Staff recommends that:

In any case where, based on customer type and/or project size, a project would not have been eligible for NEM under [Public Service Law sections] 66-j or 66-l, the project will not be eligible for Phase One NEM or the MTC element of the VDER Tariff. In all other respects, however, the project should be treated in the same way as other projects of that technology meeting the customer type and/or project size rules for compensation purposes.

(*Id.*) Multiple Intervenors agrees generally, provided elimination of customer-type-based technology and size limits can be implemented in a manner that does not increase non-participant cost impacts.

In other words, to the extent existing limitations could be eliminated such that there is greater flexibility for DER projects to receive economic-cost-based, accurate Value Stack compensation, Multiple Intervenors would have no objections thereto and generally agree with such approach. On the other hand, however, if either NEM or the MTC would be expanded by such recommendation, it should be rejected. The existing, financial burdens on non-participating customers should not be expanded here. To the extent Value Stack compensation reflects economic-based costs and actual benefits provided by DER facilities, there would not (or should not) be resulting non-participant impacts. Thus, Multiple Intervenors neither supports nor seeks to perpetuate unnecessary and/or arbitrary technology or size limitations with respect to accurate compensation methodologies. If, however, inaccurate compensation methodologies are to be retained, such that DER is subsidized as opposed to facilitated, then Multiple Intervenors opposes proposals to expand the use of those methodologies to the detriment of non-participating customers.

3. Proposed Technologies for Expanded Eligibility

In the Proposal, Staff identifies additional DER technologies and project types that could be made available for Value Stack compensation. They include: (a) CES Tier 1 eligible resources that were not already NEM eligible; (b) standalone storage, as well as regenerative braking; and (c) distributed CHP projects not already eligible under NEM. (Proposal at 4-5.) Staff then proposes to expand Value Stack compensation to such technologies and project types except for CHP. (Proposal at 5.) Multiple Intervenors disagrees. Staff's proposal violates its own principle of technology neutrality.

Initially, Multiple Intervenors is not opposed, in concept, to the expansion of Value Stack compensation to other CES Tier 1 eligible resources and standalone storage and regenerative braking. The manner in which Staff proposes to apply Value Stack compensation thereto (*see id.*) generally appears reasonable, excepting Multiple Intervenors' longstanding concerns with respect to the existing Environmental Value.

In proposing to exclude CHP technology from Value Stack compensation, Staff states that:

The only CHP that was eligible under NEM was so-called "Residential Micro-Combined Heat and Power," defined as CHP with a rated capacity between 1 kW and 10 kW that would produce at least 2,000 kWh annually, at a total fuel use efficiency of at least 80%. Staff considered expanding CHP eligibility beyond this very narrow class to all CHP below the maximum project size, currently at 5 MW, for any customer. While some stakeholders support this, others raised concerns that the record is not adequate to assure that the environmental impact of such resources would be "no worse" than bulk system power with respect to CO₂ emissions or that such resources would not unreasonably increase local pollutants in environmental justice areas or similar locations.

(Proposal at 7.) Rather than pursuing and/or maintaining technology neutrality, Staff's strained reasoning is doing the opposite.

Initially, the adequacy of the record in this proceeding provides no basis whatsoever to exclude CHP projects from Value Stack compensation. As asserted, *supra*, there is no evidentiary record in this proceeding, as the Commission and Staff have elected to proceed through collaborative meetings. If there is a so-called “record” in this proceeding, Multiple Intervenors calls upon Staff to identify exactly what is in it as of this date. Moreover, if the record is inadequate to justify making CHP eligible for Value Stack compensation, then the same fate should befall standalone storage and regenerative breaking, both of which are nascent technologies compared to CHP, which has been in existence for decades.

Moreover, Staff’s attempt to attribute potential environmental concerns to its recommendation that CHP technology be excluded from Value Stack compensation is without merit for numerous reasons. First, a DER project’s environmental characteristics arguably are relevant as to whether it should be entitled to the Environmental Value within the Value Stack; such characteristics should have no bearing whatsoever on how that project is compensated for other elements within the Value Stack, such as energy and capacity. Second, if the regulatory agencies responsible for the permitting of a CHP project allow such project to be sited and operate, then the Commission should not discriminate against such project in terms of how it is compensated. Third, Staff’s reliance on concerns about unidentified “local pollutants” not only is irrelevant as to how a facility should be compensated for components such as energy and capacity, it also seemingly is inconsistent with the Commission’s current policy of forcing customers to pay billions of dollars in subsidies to multiple nuclear generation facilities notwithstanding local environmental and safety concerns with respect to that technology. Fourth, Staff’s recommendation is inconsistent with State law, which mandates that cogeneration be encouraged. *See* N.Y. Pub. Serv. Law § 66-c (declaring it “to be the policy of this state that it

is in the public interest to encourage ... the development of ... co-generation facilities ... in order to conserve our finite and expensive energy resources ...).

The principle of technology neutrality requires that all technologies be treated equitably and comparably. If eligibility for Value Stack compensation is to be expanded to include other forms of DER, such as renewables, standalone storage, and regenerative braking, then CHP technology must be included as well. Importantly, equity and comparability does not necessarily mean precisely equal treatment. Thus, to the extent the Commission employs an Environmental Value in the Value Stack, it is reasonable to extend it to non-emitting renewable technologies while withholding it from carbon-emitting CHP technology. That being noted, however, potential environmental concerns should not be relied upon for excluding CHP projects from other components of Value Stack compensation (*e.g.*, Energy, Capacity). Additionally, as Value Stack compensation is extended to more and more types of DER, it becomes increasingly important that non-participating customers footing the bill for such compensation are protected by, *inter alia*, eliminating financial subsidies from the compensation methodology such that DER owners and/or developers are compensated for the actual economic value provided to the electric system – no more and no less.

4. Other Issues

a. Uneconomic retail rate arbitrage

In the Proposal, Staff identifies a situation whereby storage projects could engage in uneconomic arbitrage. (See Proposal at 8.) In response thereto, Staff “proposes requiring customers with stand-alone storage seeking eligibility for VDER injection compensation be charged for consumption at the utility’s Mandatory Hourly Price (MHP), resulting in both charges and credits accurately reflecting hourly values.” (*Id.*; footnote omitted.) Multiple

Intervenors generally agrees with and supports this proposal. To the extent owners of storage DER projects are utilizing them to withdraw and inject energy from the grid on a regular basis, such withdrawals and injections should be priced similarly and be based on actual market prices at the relevant times.

b. Standby and buyback rates

Noting that NEM-eligible technologies and project types generally have been exempt from utility standby and buyback rates, Staff proposes that “any standby or buyback rate provision that would otherwise apply to non-VDER prosumers be applied to customers in this expanded eligibility VDER class, except that compensation for net hourly injections would be based on the Value Stack as described in this proposal rather than on existing buyback rate compensation.” (Proposal at 9.) Multiple Intervenors generally agrees with and supports this proposal. Absent some compelling justification that an alternate rate design is necessary, standby and buyback rates generally should be applied consistently irrespective of the technology utilized by the customer. Indeed, with cost-based standby rates, there should be no need or justification for creating and/or modifying exemptions thereto.

c. Community Distributed Generation (CDG) Eligibility

Finally, Staff advances a proposal regarding eligibility for treatment as a CDG project. (*Id.*) Inasmuch as such treatment apparently would not impact compensation paid to those types of projects (*see id.*), Multiple Intervenors advocates no position with respect thereto.

B. Comments in Response to Notice

In addition to soliciting comments on the Proposal, the Commission’s Notice requests that interested parties address the following two issues.

1. Interzonal Crediting

In the Notice, the Commission requests input on whether a DER project, eligible for Value Stack compensation, should “be permitted to apply the credits it receives to the bills of customers in the same utility territory as the DER but a different New York Independent System Operator (NYISO) load zone, either through CDG or through single-customer remote crediting?” (Notice at 1-2.) Barring some concern that is not readily apparent at this time, Multiple Intervenors has no opposition to such interzonal crediting.

Once again, Multiple Intervenors seeks accurate compensation for DER, without customer-funded subsidies. Inasmuch as the compensation credited to customers under the Value Stack would be based on the location of the DER project, and the pricing in that locale, then it appears that crediting an account in a different location (but within the same utility’s service territory), while perhaps convenient for certain transactions and/or individual customers, should not result in any change to the amount of compensation received by the DER project. If, however, interzonal crediting as posited in the Notice could result in greater compensation to DER projects – and greater costs to non-participating customers – then it should be prohibited as an unnecessary and inequitable subsidy.

2. CDG Subscription Sizes

In the Notice, the Commission also requests input as to whether individual CDG members should be allowed to purchase a percentage of a DER facility’s output that is less than 1,000 kWh annually. (Notice at 2.) Multiple Intervenors advocates no position on this issue.

CONCLUSION

For all the foregoing reasons, the Commission should adopt Multiple Intervenors' positions on the issues addressed herein.

Dated: August 6, 2018
Albany, New York

Respectfully submitted,

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