

July 18, 2014

**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 14-M-0101 – Proceeding on Motion of the Commission in Regard to  
Reforming the Energy Vision – Track 1

Dear Secretary Burgess:

In accordance with the Ruling Posing Questions On Selected Policy Issues And Potential Outcomes, Establishing Comment Process, And Revising Schedule issued June 4, 2014 in the above-captioned proceeding by Administrative Law Judges Stein and Bielawski, the City of New York hereby submits for filing the attached comments for the Public Service Commission's and Department of Public Service Staff's consideration.

Please contact me with any questions. Thank you for your attention to this matter.

Respectfully Submitted,

COUCH WHITE, LLP

*Kevin M. Lang*

Kevin M. Lang

Enclosure

cc: Hon. Eleanor Stein (via email w/ enc.)  
Hon. Julia Smead Bielawski (via email w/ enc.)  
Active Parties to Case 14-M-0101 (via Listserv w/ enc.)

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

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**Proceeding on Motion of the Commission in  
Regard to Reforming the Energy Vision**

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**Case 14-M-0101**

**COMMENTS OF THE CITY OF NEW YORK  
ON TRACK 1 POLICY QUESTIONS**

**Dated: July 18, 2014**

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

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Proceeding on Motion of the Commission in  
Regard to Reforming the Energy Vision

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Case 14-M-0101

**Introductory Statement**

On June 4, 2014, Administrative Law Judges Bielawski and Stein issued a Ruling in the above-captioned proceeding which called for responses to a set of policy issues raised in Track 1 of this proceeding. The City of New York (“City”) respectfully provides the following responses to the policy issues.

Before doing so, the City offers the general observation that the transformation of the electric system envisioned by the proceeding could be monumental, and the failure to proceed cautiously and with due consideration of the implications and ramifications of the changes could result in serious deleterious consequences for the State and its residents and businesses. New York already has among the highest electric rates in the country, and the Public Service Commission (“Commission”) needs to ensure that that this proceeding does not result in even higher rates.

Although rates are high, New York City benefits from what is widely regarded as the most reliable electric system in the country, and possibly the world. For New York City to remain a leading business and financial hub, continued reliability is a critical factor. While expanding the use of distributed energy resources (“DER”) is a laudable goal, and supported by the City, the Commission should ensure that its actions do not jeopardize or reduce the level of reliability that presently exists.

Further, the Commission's plans could be interpreted as leading to a system where the nature of the electric service provided to customers is related to the amount the customers are willing to pay. In some parts of the world, electricity may still be considered a luxury; in New York, however, and especially in New York City, electric service is a basic human need. The Commission should recognize this fact and adjust its goals and plans in order to ensure that all customers continue to receive safe and adequate service at just and reasonable rates. The Commission should not create a structure that incentivizes those customers who can afford to leave the electric system to do so, but forces those who cannot to bear all of the costs of the system.

The City fully supports the Commission's overall goals of increasing the efficient use of electricity and improving the environment through lower emissions. The City also fully supports the expansion of the use of distributed resources, particularly non-carbon emitting resources. However, the City respectfully urges the Commission to balance the achievement of these important goals with their associated costs and impacts. Electricity costs should not materially increase for any customer, and the services now provided by the utilities should not be reduced in any manner. More importantly, the Commission should not proceed until it fully analyzes all of the proposed changes and examines their cost-effectiveness and propriety. That is, the Commission should not adopt radical changes to the manner in which electric service is provided to consumers across the State without a full exploration of the consequences of doing so.

The Commission spent more than three years studying its initial move to competition. The sweeping changes at issue in this proceeding require analysis that is at least as in-depth as the analysis that formed the basis of Opinion No. 96-12. Just like it did before deciding to introduce competition into the electric industry, the Commission should carefully and

comprehensively investigate the costs, benefits, and consequences of reforming the electric distribution system. As it did in the 1990s, the Commission should balance competing public policy considerations and the interests of consumers, utilities, and other parties. Most essentially, the Commission should develop a complete record, including allowing for the record to be tested (including opportunities for responsive comments as needed), before making any decisions.

### **Response to Questions**

The City offers the following responses, which are based on its preliminary understanding of the Commission's goals and intentions. The City reserves the right to supplement or modify these responses as the proceeding progresses, more information becomes available, and there is greater clarity as to the Commission's specific plans for reforming the retail electric industry in New York.<sup>1</sup>

#### **I. Potential REV Outcomes**

The City will address the six categories listed in the outcomes matrix in order. Category 1 pertains to improving air quality and expanding the use of energy efficiency and clean sources of generation. These are all goals that have been advanced by the City for years. These goals are contained in the City's comprehensive sustainability program, *PlaNYC 2030*.<sup>2</sup> Indeed, in the latest annual *PlaNYC Progress Report*,<sup>3</sup> Mayor de Blasio's administration discussed plans to

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<sup>1</sup> In addition to offering these responses, the City notes that it generally supports the policy considerations and recommendations set forth in the concurrently filed comments by a group led by the Pace Energy and Climate Center and Natural Resources Defense Council.

<sup>2</sup> *PlaNYC – A Greener, Greater New York* (issued April 22, 2007), available at [http://s-media.nyc.gov/agencies/planyc2030/pdf/full\\_report\\_2007.pdf](http://s-media.nyc.gov/agencies/planyc2030/pdf/full_report_2007.pdf).

<sup>3</sup> *PlaNYC Progress Report: Sustainability and Resiliency 2014* (issued April 22, 2014), available at [http://www.nyc.gov/html/planyc2030/downloads/pdf/140422\\_PlaNYC-Report\\_FINAL\\_Web.pdf](http://www.nyc.gov/html/planyc2030/downloads/pdf/140422_PlaNYC-Report_FINAL_Web.pdf).

increase energy efficiency opportunities throughout New York City, make the City's building codes "greener," expand the Carbon Challenge for Multifamily Buildings programs to reduce greenhouse gas emissions from participating buildings by 30 percent in 10 years, add opportunities for public education on energy efficiency and energy savings actions, and lead by example through new programs designed to reduce energy usage by the City's administrative agencies. Given these actions and programs, the City strongly supports efforts at the State level to achieve the same goals. Improving air quality and using electricity more efficiently will benefit all New Yorkers now and for generations to come.

Category 2 pertains to engaging and informing customers about the options and opportunities available to them, increasing access by third parties to customer data, improving customer-utility/provider interactions, and creating fair and equitable rules for all market participants. This is a very broad category, and it perhaps encompasses too much as a single category. For example, access to customer information and removing barriers to aggregation are important, but they have nothing to do with the ability of a customer to interconnect its distributed generation ("DG") facility or the standby rates imposed on that customer. Accordingly, the City recommends that this category be split into at least two categories – one focused on the needs and interests of customers in installing DER and interacting with their utilities, and one focused on the needs and interests of the DER community in being able to access customer data and fairly compete with utilities and each other.

Within the first of these subcategories, the City submits that the single most important action that the Commission can and should take is to update and revise standby rates. There have been substantial changes and improvements in the electric industry and in DER technology since standby rates were adopted at the beginning of this century. However, the standby rates

have not kept track with these developments, and they now can act more as a barrier than a measure of fairness if the standby rate levels are not fully justified, or are made subject to overly conservative or unwarranted assumptions, such as positing a simultaneous, universal failure of independent interconnected facilities under peak demand conditions. Similarly, customers must enter into interconnection agreements with utilities for their DG facilities. There are only limited rules governing this process, and the utilities can in effect make the process a secondary barrier to the expansion of DER. The Commission should set clear interconnection rules and deadlines applicable to all sizes of DG facilities. Moreover, addressing standby rates and the interconnection issues should be taken up as soon as possible, and the Commission's actions and decisions should be based on a complete factual record that is developed through the Commission's ordinary procedures, including, as appropriate, the opportunity for parties to probe and challenge the assumptions proffered by the utilities and Staff.

Within the second of these subcategories, a balance must be struck between providing access to customer data and protecting customers' privacy rights. Also, the Commission needs to take steps to ensure that low income customers, who presumably may be viewed as less compelling customers by many DER providers and energy service companies ("ESCOs"), receive fair and equitable treatment and are able to fully participate in the benefits of DER and energy efficiency opportunities. As to accomplishment of these objectives, the City is not prepared at this time to offer specific suggestions. However, the City is willing and prepared to collectively consider these issues with Staff, the utilities, DER providers, and other interested parties. These issues involve policy-based considerations as much as factual information, and therefore, a true collaborative process (*i.e.*, the type of collaborative process commonly used in

other agency proceedings) would be the most appropriate means of developing recommendations to the Commission.

Category 3 pertains to providing safe, reliable, and resilient service. The City strongly encourages the Commission to ensure that there is no backsliding on the provision of safe and reliable service. New York City residents have already experienced the consequences of unsafe service, and the Commission must ensure that its historical commitment to safety is not diminished as it moves to this new service structure. Reliability is also critical to the health, welfare, and success of New York City. New York City electric customers have long paid for the most reliable electric system in the world, and they expect and insist upon high levels of reliability. Moreover, safe and reliable electric service is now a basic human need in New York City. Therefore, it is imperative that the Commission not reduce the level of reliability that now exists or require customers to pay more – as a “value-added service” – for the level of reliability they now receive. The City has no objection to the concept of allowing others besides the utilities to help serve customers, but it strongly objects to forcing customers to pay extra for highly reliable service.

With respect to resiliency, the agency is well aware of the City’s efforts after Hurricane Sandy to assess and begin to take the steps necessary to protect New York City infrastructure from future severe weather events and to quickly recover after such events. The City submitted extensive testimony and evidence in the last round of Con Edison rate cases on this topic, and it has worked closely with Con Edison and Staff to implement its recommendations. More generally, the Moreland Commission identified the need for the Commission to place more emphasis on resiliency considerations, and the City is pleased to see that the Commission has done so.



Those efforts are separate and apart from this proceeding, and they should not be slowed down or halted because of this proceeding. Regardless of who provides utility services, the services must be provided in a resilient manner, and the facilities used to provide such services must be designed and constructed to withstand known and projected severe weather events, such as flooding storm surges, high winds, icing, and heat waves. Additionally, considerations such as fuel diversity, access to fuel, and dual-fuel capability should apply equally to central generating facilities and DER facilities.

Category 4 pertains to operational efficiency. This is also a very broad category, and the Commission should more specifically define what it is attempting to achieve. For example, during the recently-concluded working group process, there was extensive discussion about whether the utilities or distribution services platform provider (“DSPP”) should be purchasing energy or capacity from DER providers. The City submits that there is no good reason to create duplicative energy and capacity markets at the wholesale and retail levels.

To date, there has also been much discussion, but little progress, on the topic of measuring costs and benefits. As discussed by some of the speakers at the Commission’s Symposium in May, one of the first steps the Commission should take is to conduct a comprehensive cost-benefit analysis, including externalities as appropriate. The results of that analysis should then be used to frame the policies it adopts and the actions it takes. Unfortunately, to date it does not appear that the Commission has heeded the advice provided as Staff has stated that there are no plans to conduct such an analysis.

This category includes a focus on peak load reductions. There has been substantial study of this issue, and the evidence seems undisputed that the best value to customers will come from reducing peak demand and peak load. Given the magnitude of the changes the Commission is

envisioning in this proceeding, as discussed in the Staff Report, the Commission should proceed slowly and with great care. Addressing the peak issues first makes the most sense, so perhaps the Commission should limit its initial actions to reducing the peak.

Category 5 pertains to innovation. In *PlaNYC* and other documents, the City has long recognized the need for innovative thinking and innovative action. Indeed, the New York City Panel on Climate Change and Mayor de Blasio's Climate Change Adaptation Task Force are both examining innovative ways to address the problem of greenhouse gas emissions and prepare New York City and its residents and businesses for impacts associated with climate change. The advancement and prosperity of the City, State, and nation have long been based on innovation, and the electric industry should not be excluded. However, in embracing innovation, care is needed to ensure that no customers are harmed. That is, all customers need, and should receive safe, adequate, reliable, and resilient electric service at just and reasonable rates. Modernizing the electric system and adding diversification of supply resources are laudable objectives, but the Commission must temper the cost of such initiatives with the burdens such costs place on customers. New York already has among the highest electric rates in the country, and we should not sacrifice economic development and jobs by increasing rates to support innovation. Further, innovation opens the opportunity for more services for customers who can afford them. The Commission should make sure that all customers can benefit from innovative investments that are funded by all customers through rates.

Category 6 pertains to customer satisfaction. To a large degree, the concepts in this category dovetail with considerations in the other categories, some of which are discussed above. The Commission's principal purpose in being is to protect customers and ensure that they receive fair value for the rates they pay. That core purpose should not change regardless of the

technology and processes used to provide service to customers. That is, while some aspects of utility service continue to evolve, and attributes of competition in certain facets of utility services become possible, other aspects of utility service remain inherently monopolistic in nature. Before the Commission was established, there were multiple companies providing duplicative utility services, and the public was exposed to the gross inefficiency of dozens of competing overhead wires, high prices, poor service, and fears for its safety. Today, the numerous protections provided by the Commission's existence are so well established that they ordinarily escape public notice. However, any reduction in the Commission's vigilance is certain to be noticed, and not positively. Thus, while the Commission can and should promote choice and options, it must ensure that customer service quality remains high (among utilities, DER providers, ESCOs, and others providing utility-type services and products to customers) and that the cost of utility service remains affordable.

## II. Optimal Ownership Structures for Distributed Energy Resources (DER)

Generally, the City concurs that it makes sense, at least initially, for the utilities to serve as the DSPP. To create a different entity would entail extensive discussions and negotiations regarding the role and parameters of the DSPP, its ability to access information from utilities, costs and cost recovery, and dozens of other issues. The process presumably would be similar to the years-long process associated with the creation of the New York Independent System Operator, Inc. ("NYISO"). Further, if the DSPP were to be a separate entity, significant legal considerations would need to be addressed. The foremost question would be whether the entity would be subject to the jurisdiction of the Commission or the Federal Energy Regulatory Commission ("FERC"). Arguably, if an independent DSPP is purchasing products or services for resale to utilities (or customers), the entity is engaged in wholesale transactions under Section

201 of the Federal Power Act and subject to the exclusive jurisdiction of the FERC (the same concern could apply to the utilities as the DSPP, but to a lesser extent). Moreover, installing a separate entity as the DSPP would add a new layer of administration and additional costs on the provision of electric services – costs that are neither desirable nor necessary.

There is one aspect of the Staff discussion with which the City takes issue. The suggestion that financial incentives to the utilities should be employed raises concerns. The Commission has broad authority over the utilities, now, under the Public Service Law, and it can impose penalties on the utilities for failure to obey state statutes, regulations, and Commission orders. Some of the aspects of the new vision discussed in the order arguably could be ordered by the Commission, now, with the utilities being sanctioned for their failure to comply. Examples include conducting integrated resource plans and considering alternatives to infrastructure investments.

As to other aspects of the new vision, and as noted above, the absence of a comprehensive cost-benefit analysis is a critical shortcoming. If utilities must be incentivized to optimize the efficient use of DER, the cost of such incentives must be included in the analysis. If the total cost of the DER alternative is higher than the cost of traditional service (*i.e.*, adding or replacing infrastructure), then the alternative should not be pursued. The Commission should not be increasing rates and burdens on customers to support such DER projects unless extraordinary circumstances can be shown to justify such an approach.

Moreover, significantly lacking in this proceeding is evidence that DER is necessarily a superior option to utility infrastructure, and that a robust DER market is therefore appropriate. Before the Commission moves forward with utility inducements and other actions to support DER proliferation, the Commission should demonstrate that there is a compelling reason for

doing so. For example, it is not clear that installing 50 or more 10 MW non-cogeneration DG facilities would be superior from an economic or environmental perspective than a single, state-of-the-art 500 MW generating facility. In fact, because DG facilities tend to have shorter stacks, the localized environmental impacts of such diffuse facilities could be worse. It is also not clear that microgrids are appropriate alternatives to the interconnected utility grid in most settings. Certainly, there are areas that are self-contained or with a customer composition where a microgrid makes eminent sense and should be pursued. But, there does not seem to be any merit to generally convert blocks or neighborhoods throughout New York City (or any other part of the State) into microgrids.

The City does not dispute that there can be clear benefits from DER installations, and the City generally supports the ability of customers to have options and the ability to choose the best options to service their respective needs. From a system-wide perspective, though, it has not been established that DER facilities are preferable to utility infrastructure, or that they will be as or more reliable and resilient than the electric grid. During recent severe weather events, some customers with DER fared better than the system as a whole, while other customers with DER fared worse. There is an assumption built into the Staff Report, and this question, that optimizing the use of DER is in the customers' and State's best interests. However, the Report and the record in this proceeding so far do not provide factual support for this assumption.

In sum, the Commission should avoid proceeding on the basis of unfounded assumptions. Rather, it should gather and analyze the facts, examine the costs and benefits of DER, compare the costs and benefits of DER to traditional utility infrastructure investments, subject its analysis and evaluations to scrutiny, and base both its policy statement and its directives on a complete record. It should not commit customer resources, or provide incentives to utility shareholders,

unless and until it can demonstrate that the benefits to be gained by such actions will exceed the costs.

### III. DSPP Identity

The City is aware of concerns expressed by some DER providers that if the utilities serve as the DSPP, there would continue to be barriers to their entry into the marketplace. While these concerns are legitimate, it does not make sense to burden electric customers with a new layer of administration and its concomitant costs. Rather, the concerns should be addressed through changes to the Commission's procedures, rules, and regulations, utility tariffs, and close oversight and enforcement by the Commission and Staff. Moreover, the provision of basic utility service remains the most essential function of the utility/DSPP, so it makes sense for the utilities to assume this role.

There is an important issue related to this question that was not treated by the Staff Report, but which should be considered by the Commission. If the DSPP is some entity other than the utilities, then any transactions between and among the DSPP, DER providers, ESCOs, and the utilities would be wholesale transactions, not retail transactions. The Federal Power Act and recent court decisions examining the respective scopes of federal and state jurisdiction have made clear that wholesale transactions are exclusively subject to the FERC's jurisdiction. Therefore, if the DSPP is any entity other than the utilities, the DSPP would essentially become a second independent system operator likely subject to the jurisdiction of the FERC, not the Commission. New York does not need, and cannot afford, two such entities in addition to the utilities operating the electric system.

Even if the utilities become the DSPP, the same concern applies – a consideration not discussed in the Staff Report. Any transactions between the utilities/DSPP and DER providers,

ESCOs, or others would be wholesale transactions – that is, the DSPP would be purchasing products and services for resale to retail customers. As such, the DSPP and the transactions would be subject to the exclusive jurisdiction of the FERC, not the Commission. Therefore, the Commission would not be able to regulate or control such transactions, or even have a role in the operation of the DSPP. Considering that one of the motivating factors for this new structure is to help foster and advance the State’s public policies, it is not clear how a new entity outside the Commission’s jurisdiction would, or could, accomplish the Commission’s goals.

#### IV. Benefits and Costs

The City is concerned by the premise of this question that a policy decision may be based on one type of analysis that finds the proposed structure, or aspects of it, to be cost-effective, but analyses conducted by the utilities or others find the same aspects not to be cost-effective. This disconnect could lead to customers being inappropriately required to subsidize an industry or products or services than no reasonable actor would consider to be sensible or economically justifiable. Since the core concept of this proceeding is to induce more competitive behavior, the Commission should conduct the same analysis as market participants to ensure that its policy decisions are reasonable and implementable. Put another way, if no DER provider could offer its product or service without subsidies by ratepaying customers, it would be irrational for the Commission to find, as a matter of policy, that offering such product or service on a competitive basis would be cost-effective.

This proceeding was commenced less than three months ago, and there are still many unanswered questions about the Commission’s vision for the end-state, or the goals for this proceeding appear to be partially in flux and partially contradictory. The City is still seeking clarification concerning the Commission’s motivations for a new structure, the purpose and role

of the DSPP, and the interplay among the DSPP, utilities, DER providers, ESCOs, other market participants, and customers. As discussed at the July 10, 2014 technical conference, there are substantial unknowns in this matter and significant amounts of fact-gathering remain to be completed. Given the limited information available at this early stage of this proceeding, the City is not prepared to recommend or advance any particular analytical framework for this proceeding.

Certainly, one of the shortcomings of the wholesale electric markets is the absence of consideration of public policies and environmental attributes in pricing. The NYISO and its market advisor assert that all decisions should be based on financial economics alone, but many industries now routinely place value on other factors such as environmental benefits. For example, “green” or Leadership in Energy and Environmental Design-certified buildings can command higher rents, Wal-Mart and many other businesses purchase renewable energy even though it costs more than other types of energy, and architects and interior designs incorporate green considerations into office designs even if other approaches would be more cost-effective. While cost is an important factor in many business decisions, it is no longer the only factor.<sup>4</sup>

In considering the value propositions being advanced in this proceeding, and in determining whether and how to proceed in this matter, it is important for the Commission to consider all aspects of value of various alternatives, including the environmental and other public policy values. Whether and how certain externalities should be assigned monetary value, or simply qualitatively included in the Commission’s determinations, are matters that should be

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<sup>4</sup> Indeed, the FERC no longer limits its consideration of projects to economic factors. In its Order No. 1000 (*Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, 136 FERC ¶ 61,051 (2011) and 139 FERC ¶ 61,132 (2012)), the FERC mandated that utilities add procedures in local and regional transmission planning processes to consider transmission needs driven by public policy requirements.



developed via an iterative approach involving input from all sectors and interested parties. This approach would allow for the development of an analytical framework that includes the best attributes of all of the recommendations. Importantly, it also would allow for testing, critical analysis, and improvements of the framework that should produce a superior final result than if the Commission simply selected an approach recommended by one or a group of parties, or aspects of approaches recommended by different parties. In undertaking a dramatic restructuring of our electricity infrastructure, an opportunity to see the actual operation of new structures and mechanisms should be afforded before their widespread adoption across New York State.

#### V. Transition for Clean Energy Programs

A review of the status of the existing Energy Efficiency Portfolio Standard (“EEPS”) and Renewable Portfolio Standard (“RPS”) programs, and the progress reports prepared by the New York State Energy Research and Development Authority (“NYSERDA”), demonstrate that none of the programs are expected to achieve the goals for which they were instituted. While significant progress has been made, which is laudable, the programs have placed a substantial burden on electric customers across the State. The fact that the surcharges now exceed the cost of providing electric service for some customers is deeply troubling, and the City applauds the Commission for recognizing this problem and instructing NYSERDA to begin to transition to a world where existing surcharges are gradually phased down.

The performance of the programs to date indicates that direct subsidies are not likely to achieve the State’s goals. As the Commission itself recently observed, “both the RPS and EEPS goals have thus far appeared to be unattainable.”<sup>5</sup> NYSERDA’s market transformation initiatives, however, have had greater success. Alternatives to incandescent light bulbs are now

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<sup>5</sup> Cases 14-M-0094, *et al.*, Consideration of a Clean Energy Fund, Order Commencing Proceeding (issued May 8, 2014), p. 2.

widely available, and most manufacturers now routinely offer energy efficient appliances, building materials, and other products. The concept of building and retrofitting “green” buildings, once considered a rare exception, is rapidly becoming the standard. These transformative activities show the greatest promise at achieving the State’s (and City’s) environmental goals because they avoid the need for ongoing studies, benefit far more customers than subsidies do, and arguably are more cost-effective over the long-term. In its Order instituting the proceeding to create the Clean Energy Fund, the Commission properly recognized the merit and advantages of transformative activities over subsidies and established a path to both reduce the overall size of the surcharges and focus the use of the funds collected on these activities. The City supports the Commission’s plans in this regard and looks forward to working with the Commission, NYSERDA, and the utilities in implementing these transformative programs.

There should be a gradual shift from subsidies to transformational efforts as the market for new products and services develops and matures. If properly executed and supervised, this shift should ensure that the State continues to advance towards its environmental goals, and backsliding should not be a concern. Indeed, as the marketplace, and consumers generally, embrace new efficient technologies, the pace of advancement should increase.

The expanded use of DER can also contribute to achievement of the State’s goals, but only if it involves an appropriate mix of resources and provided that electric customers are not now required to subsidize resources and resource providers that lack proper business plans and viable products and services. As noted above, it is not clear that replacing a new, clean, efficient 500 MW central generating station with multiple small, gas-fired distributed generation facilities would constitute an environmental improvement or a more efficient use of natural gas.

Moreover, as the City notes in its Responses to the Track II questions, many of the barriers that are inhibiting the growth of DER (*e.g.*, standby rates; interconnection costs; lack of access to markets) can be resolved by tariff changes that do not require the institution of new subsidies. These solutions should be explored and, where justified, adopted before any new subsidies are introduced.

## VI Enhanced Services

For many decades, customers have paid for safe and reliable service, including high power quality, in their utility rates. As the Commission embarks on this new structure for distribution service, it should not consider any reductions in the level of service provided to customers. Moreover, customers should not now be required to pay extra for the service they have already received. In New York City, for example, customers have paid for and received the most reliable electric system in the world. They should not be required to pay extra in the future for the maintenance of highly reliable service. More broadly, basic service should include all aspects of electric service required to provide safe and adequate service at just and reasonable rates, including power quality within industry standard and utility-specific historical experience, no diminution in any of the metrics used to measure reliability performance and customer service, and all of the protections set forth in the Public Service Law, Commission regulations.

The City is not opposed to the utilities providing enhanced services that customers may want, nor is it opposed to competition in the provision of enhanced services between and among utilities, DER providers, ESCOs, and others. However, the Commission should draw a clear distinction between the utilities' provision of basic services (which would in most cases remain an inherently monopolistic function) and competitive services. For the former, the utilities' reasonable costs and a reasonable rate of return should be included in rates. For the latter,

however, there should be no rate support and the utilities should be subject to the same market and business risks as their competitors. The costs of personnel, equipment, supervision, information technology support, materials, and other support should be segregated and excluded from the utilities' revenue requirements.

Taking these steps should help to ensure that there is a level playing field among all competitors, and that only those entities with rational and well-founded business plans will survive and prosper. Moreover, the lack of ratepayer support should help to ensure that customers and the market decide which products and services are meritorious. This process was essentially followed in the telecommunications industry, and it appears to have been very successful.

The revenue requirement for the utilities' provision of basic service should continue to be determined via periodic rate cases. While there has been some discussion of extending the term of rate plans to eight or ten years, the City strongly urges the Commission to reject this concept. The perils of long-term rate plans have been amply demonstrated in New York; examples include the inadequate level of infrastructure investments during National Grid's 10-year rate plan and inability of Staff and interested parties to properly audit the utility's expenditures<sup>6</sup> and the excessive overearnings realized by New York State Electric & Gas Corporation and The Brooklyn Union Gas Company d/b/a National Grid NY during their extended stay-out periods which led to the necessity for corrective action by the Commission.<sup>7</sup>

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<sup>6</sup> See, e.g., Case 01-M-0075, Joint Petition of Niagara Mohawk Holdings, Inc., Niagara Mohawk Power Corporation, National Grid Group plc and National Grid USA for Approval of Merger and Stock Acquisition, Ruling On Discovery Enforcement (issued August 22, 2006).

<sup>7</sup> See Case 01-E-0359, Petition of New York State Electric & Gas Corporation for Approval of its Electric Price Protection Plan, Order on Temporary Rates (issued January 10, 2002); Case 12-G-0544, In the Matter of the Commission's Examination of The Brooklyn Union Gas

Under this new construct, it will be critical for the Commission to closely monitor the utilities' activities and ensure that the utilities are properly segregating their costs for basic service and competitive service. It is equally as important for the Commission to ensure that the utilities are maintaining proper levels of reliable service and customer service. Extended term rate plans could restrict the Commission from taking the corrective actions that may be necessary if improper or undesirable conduct is identified.

Within the category of competitive services, there will be a continuing need for Commission oversight. Competitive conflicts may arise, for which the Commission is best suited to be the arbiter. There may be some products or services that are needed or desired by customers, but which no entity is willing to provide on a competitive or market basis. The Commission may need to step in and add such products or services to the basic service offered by the utilities (which is another reason not to engage in long-term rate plans). There may also be abuses and deleterious conduct which the Commission will be best and most expeditiously able to deter or halt. By way of comparison, while there is broad competition in the telecommunications industry, and competitive principles govern the operation of the wholesale energy markets, the Federal Communications Commission and FERC continue to serve important roles in overseeing those industries and markets and protecting customers.

#### VII. Access to Data

As its name implies, Case 12-M-0476 was instituted to assess retail access policies and procedures for residential and small non-residential customers. This proceeding, however, is much broader in scope and will affect all customers. Thus, access to data in the context of this proceeding is broader than the access issues being considered in Case 12-M-0476. Pertinent to

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Company d/b/a National Grid NY's Earnings Computation Provisions and Other Continuing Elements of the Applicable Rate Plan.

this proceeding, customers' ability to intelligently evaluate DER products and services, and to compare offerings from different entities, will require them to have access to their own usage information. In developing products and services that customers may want or need, DER providers, ESCOs, and others will need access to a broad array of information pertaining to customer usage, load shapes, distribution system needs, planned infrastructure improvements, equipment loadings and ratings, and much more.

A balance is needed between these entities' access to data and customers' personal privacy protections. The City urges the Commission to continue to adhere to its long-standing policies on such protections and require affirmative consent from customers before the utilities release customer-specific data to any third party. However, aggregated data that would allow DER providers and others to target specific areas of a utility's service territory for projects that might solve local constraints or provide other benefits should be made available. Also, customers who are considering installing DER should have sufficient access to pertinent information to determine whether such facilities feasibly (technically and financially) can be installed and, as appropriate, interconnected with the distribution system, and whether there exist utility infrastructure impediments to such facilities (*e.g.*, over-dutied circuit breakers at the local area substation, inadequate gas capacity). DER providers should also have access to similar information (on an aggregated basis, generally, and on a customer basis with proper customer consent) to make similar determinations.

The inquiries in Case 12-M-0476 are important and should proceed on their own in parallel with activity in this case. In this proceeding, the Commission should examine more comprehensively the types of data that may be needed by consumers and non-utility entities, and it should institute rules and procedures to provide for the access to and sharing of pertinent, non-

protected data. Otherwise, the ability of DER providers, ESCOs, and others to participate in the new structure for the distribution system will be inhibited and fulfillment of the Commission's vision will be frustrated.

#### VIII. Other Issues

The City is concerned that the proposed pace of this proceeding will not allow adequate time for prudent decision-making. In the early 1990s, the Commission began to consider restructuring the electric industry in New York. Some initial work was done in utility rate proceedings and small-scale generic proceedings. A comprehensive examination of the issue was commenced in Cases 93-M-0229 and 94-E-0952.<sup>8</sup> In total, the Commission spent more than three years examining and evaluating the issues before it issued Opinion No. 96-12 in May 1996. There were many opportunities for parties to submit comments, and issues were very carefully analyzed.

Here, in contrast, the Commission is considering changes that could be more sweeping than those undertaken in Cases 93-M-0229 and 94-E-0952, but it is proceeding on a much more aggressive timeline, and, as noted above, without adequately analyzing all of the potential consequences and ramifications of the changes. For example, the Commission has not conducted any analysis of the costs compared to the benefits of the proposed changes, and Department Staff has indicated to the parties that there are no plans to do so before the Commission takes action. Whereas there was extensive input in Case 94-E-0952, here the Commission has made provision for only two rounds of comments – these comments and a

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<sup>8</sup> Case 93-M-0229, Proceeding on Motion of the Commission to Address Competitive Opportunities Available to Customers of Electric and Gas Service and to Develop Criteria for Utility Responses; Case 94-E-0952, In the Matter of Competitive Opportunities Regarding Electric Service.

round of comments on a Staff white paper that apparently will be based on very little record evidence.

The efforts undertaken to date, which have consisted solely of the working group meetings, have in the City's view not yielded a sufficient basis for properly supported final Commission action. By design, the process was not intended to, and did not, yield consensus among interested parties. As stated at the July 10, 2014 technical conference by many presenters, Staff and the parties have only "scratched the surface" of all of the issues that should be considered by moving forward, and there is a tremendous amount of work still to be completed. Many important issues remain undeveloped, all of the facts needed have not yet been collected, and limited analysis has been undertaken.

Further, all interested parties have not yet been given a reasonable opportunity to be heard. In Working Group 1, the large number of interested parties participating in the Markets Committee caused Staff to create a Steering Committee of representatives from different sectors. Parties were forced to participate indirectly through the Steering Committee members. Large group meetings proved to be unwieldy, thereby depriving all parties of equal opportunities to be heard. Within the Steering Committee, the members could not reach agreement on what the products and services to be purchased and sold by the DSPP should be. In fact, virtually all aspects of the information developed by the Steering Committee were disputed by at least one sector, and there were many disagreements on whether particular pieces of information constituted facts or merely representations of policy positions by one or more sectors. Many details regarding the role and purpose of the DSPP were never addressed, and consequently, an adequate record upon which the Commission could render a decision has not to date been developed.



Within the Customer Engagement Committee, there was little consideration of engagement of residential and small, non-residential customers. Many options for engaging customers were never discussed at all, or only very cursorily. Only one potential model was presented to the Commission at its July 10 technical conference, and that model does not even constitute a method of customer engagement. Rather, it would have local governments make decisions on behalf of their constituents, then automatically apply the decisions to their constituents unless they take the affirmative step of opting out of the process. This process does little to actively engage customers; it primarily changes the decision-maker from the utility (which has vast experience in and knowledge of the electric industry) to the municipality (many of which may have little or no experience with or knowledge of the industry). The customers may be involved at the outset, when a municipality selects a consultant to run the program and considers the type of products to be solicited of ESCOs, but thereafter there is little to no customer involvement. Moreover, these aggregation programs may not provide opportunities for customers to consider or install DER. As demonstrated by the presentation at the Commission's July 10, 2014 technical conference and in the associated materials, there was no consideration or discussion or analysis of whether this model would work in New York or whether it would result in savings or other customer benefits. No details were discussed regarding what happens to those customers who opt out, and there was no consideration of the potential costs of this approach. As with the Markets Committee, this committee cannot be considered to have produced an adequate record upon which the Commission could make any decisions.

For the foregoing reasons, the City respectfully urges the Commission to adopt a more deliberate process for this proceeding so that a complete record can be developed and comprehensive analyses are completed before taking any action. As discussed at the May 22,

2014 Symposium related to this proceeding, it is important to fully understand and assess the issues and alternatives before moving forward.

With respect to the structure and framework of the DSPP and retail market as envisioned in this proceeding, the City respectfully submits that the Commission should not attempt to pick winners and losers among the various types of DER and energy efficiency initiatives that now exist or which may be developed in the future. Rather, the Commission should limit its efforts to creating fair market rules that give all interested market participants an equal opportunity to participate and compete with each other. As in the telecommunications industry, the market and private investment should determine which technologies, products, and services thrive and which are abandoned.

Further, customers should not be saddled with the costs of supporting products and services that are not needed or desirable. The best outcome would involve no subsidies at all. If there must be subsidies, they should be limited in size, of short duration, and designed to support market transformation activities, not support for individual market participants or customers.

In moving forward, it is also important that the Commission coordinate with its sister agencies, particularly the Department of Environmental Conservation (“DEC”), to ensure that its goals are not frustrated or inhibited by administrative barriers. For example, the DEC has been considering emissions standards for “clean” DG facilities for many years, but still there are no regulations in place. DER providers will need to be able to timely and feasibly site DG and other facilities. To do so, there needs to be relief from burdensome standby rates and onerous interconnection procedures, and there also needs to be a clear, understandable, and reasonable process in place able to secure the requisite administrative permits and approvals.

The City applauds the Commission for seeking input at this early stage of this proceeding, and it urges the Commission to continue to seek participation from interested parties and persons throughout the course of this proceeding. Before any decisions are made, the Commission should carefully consider the input received and the potential ramifications of its actions. The Commission should proceed deliberately and incrementally to ensure that system reliability and safety are maintained, the cost of electric service remains just and reasonable for all customers, and any deleterious consequences are avoided or minimized.

Respectfully submitted,

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New York, NY

*/s/ Michael Delaney*  
Michael J. Delaney, Esq.  
Director, Energy Regulatory Affairs  
NYC Mayor's Office of Long Term  
Planning & Sustainability  
255 Broadway, 10<sup>th</sup> Floor  
New York, New York 10007  
(212) 676-0756  
[mdelaney@cityhall.nyc.gov](mailto:mdelaney@cityhall.nyc.gov)