STATE OF NEW YORK
DEPARTMENT OF PUBLIC SERVICE

CASE 14-M-0101 -	Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision.
CASE 14-M-0094 -	Proceeding on Motion of the Commission to Consider a Clean Energy Fund
CASE 10-M-0457 -	In the Matter of the System Benefits Charge IV
CASE 13-M-0412 -	Petition of the New York State Energy Research and Development Authority to Provide Initial Capitalization for the New York Green Bank
CASE 07-M-0548 -	Proceeding on Motion of the Commission Regarding an Energy Efficiency Portfolio
CASE 03-E-0188 -	Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard

COMMENTS

AARP
and

PUBLIC UTILITY LAW PROJECT OF NEW YORK, INC.

ON

CLEAN ENERGY FUND PROPOSAL

DECEMBER 8, 2014

INTRODUCTION AND OVERVIEW

AARP, a nonprofit organization, helps people over the age of 50 to exercise independence, choice, and control in ways beneficial to them and to society as a whole. AARP members, many of whom live on low or fixed incomes, need affordable, reliable utility service. Millions of AARP members reside in New York State. The Public Utility Law Project of New York, Inc. ("Utility Project") is a not for profit organization representing the interests of low-income persons in utility and energy matters. In preparing these comments we have been assisted by Barbara R. Alexander, Consumer Affairs Consultant,[1] who has a national practice on consumer protection regulation of public utilities and alternative energy suppliers.

They are filed in response to the Commission's November 6, 2014 Notice Soliciting Comments on the Clean Energy Fund (CEF) Proposal submitted by NYSERDA on September 23, 2014, and NYSERDA's recommendation for 2015 Reallocation Supplement filed on November 17, 2014. Further, our Comments are in response to the Petition of Multiple Intervenors (MI) for Expeditious Relief from Existing Surcharges that was filed on June 2, 2014 and consolidated with the above-identified Cases.

Our comments also reflect the Initial and Reply Comments filed in the REV proceeding. We ask the Commission to adopt a primary focus to "improve affordability" of essential electric service in its actions in response to the NYSERDA CEF Proposal to repurpose existing surcharges and the corresponding $925 million/year in current surcharge revenues and integrate those concerns in its implementation of REV policies.

While we are unable to make specific recommendations for funding levels and program implementation beyond 2015, and since the Commission has not yet issued final REV policies or

[1] Ms. Alexander's expertise in this area is a reflection of over 30 years of professional experience in consumer protection policies and programs, both with respect to consumer credit transactions, public utility regulatory policies, and regulation of retail competitive markets.

implementation orders for either Track One or Track Two (we note that the Staff's Track Two REV policy proposals concerning rate design and ratemaking changes has not yet been issued), our comments are intended to ensure that the Commission establish policies to support programs that will ensure affordable electric service for all customers and to particularly address the urgent need to make electric service more affordable for low and moderate income households.

COMMENTS ON THE CEF PROPOSAL

In its May 8, 2014 Order in Case No. 14-M-0094, et al., the Commission instructed NYSERDA to develop a framework for funding "clean energy programs" that establishes a transparent upper limit on contributions from ratepayers. In its CEF Proposal to revise the electric bill surcharges, NYSERDA asks the PSC for permission to (1) reallocate funds in the Energy Efficiency Portfolio Standard (EEPS) and System Benefits Charge (SBC) Programs for continuation of programs in 2015; (2) establish the new Clean Energy Fund to supplant the SBC, EEPS, and other programs and take related actions; (3) establish annual electric bill surcharge collections caps, permit collections up to but not exceeding those caps, and permit the use of currently uncommitted funds and collected funds on a "bill-as-you-go" fund management approach; (4) establish new collections for a "NY-Sun" program for the period 2016 to 2023; (5) establish collections for the new New York "Green Bank" (NYGB) program; (6) establish a Market Development program and collections, funding, and management rules for that program; and (7) establish a Technology and Business Innovation program and collections, funding, and management rules for that program.[2]

The Commission requested recommendations from NYSERDA for annual ratepayer electric bill surcharge collection levels for each year of the 2016–2020 program cycle and beyond. The proposed annual collection levels, as envisioned by the Commission, would be below the authorized

[2] The September 23, 2014 NYSERDA Proposal for CEF is available at http://bit.ly/1rTvObj

2015 levels for the RPS (Renewable Portfolio Standard), the EEPS (Energy Efficiency Portfolio Standard), the SBC (Societal Benefits Charge), and the T&MD (Technology and Market Development) programs, which total $925 million in 2014 - 2015. These programs are funded by ratepayers, via surcharge rates imposed by the Commission on customer bills for electric service, collected by the utilities, and remitted to NYSERDA for expenditure on its non-utility programs under Commission's direction.

In its September 23, 2014 Proposal, NYSERDA recommends a total CEF funding of approximately $5 billion through 2025. NYSERDA's proposal breaks down CEF funding into two five-year cycles. Under the first five-year cycle (2016–2020), CEF will operate within a period of transition, during which the older programs (SBC, EEPS, and RPS) are phased out and new programs are launched. Funding allocations and decision-making during the second five-year cycle (2021–2025) will be informed, in part, by the experience gained during the first funding cycle. NYSERDA will conduct reviews every three-year review cycle to measure performance and adjust program parameters as necessary and appropriate to improve performance and/or adapt to new information or emerging market conditions.

In its CEF Proposal, for the first three years (2016–2018), NYSERDA proposes a total annual funding amount of $648 million. This total of $1.944 billion over those three years appears to be $267 million a year less than the current surcharge revenues, amounting to $801 million less over the three years. As requested by the Commission, NYSERDA also proposed reduced annual funding levels thereafter over time, falling to $453 million, $428 million, and $308 million per year in 2019, 2021, and 2025, respectively. Instead of reducing the surcharges as much as proposed, they could be reduced less, using the funds retained to support additional rate reductions for low-income customers

and other targeted low-income affordability measures.[3]

It is not clear how the Commission will address the CEF Proposal, particularly in light of the funding levels recommended by NYSERDA. AARP and the Utility Project cannot comment on the specific funding levels recommended by NYSERDA for specific programs. However, we recommend that the Commission implement the following policies in its consideration of the specific programs and funding levels reflected in the CEF Proposal:

First, we urge the Commission to focus on the policies recommended by the Draft Energy Plan as described in more detail in our Reply Comments in the REV Track One proceeding. As pointed out, the State's Draft Energy Plan urges a primary focus to "improve energy affordability"[4] and proposes consideration of expanded low-income efficiency programs and low-income rate discounts. The Draft Energy Plan describes in detail the high prices, high bills, and indicia of unaffordable electric bills for many New York households. In addition, Volume II attached to the Draft Energy Plan documents the stark reality of New York's high energy prices and their impact on household income, as well as the lack of robust bill payment assistance programs:

> New York's households with incomes below 50 percent of the Federal Poverty Level pay more than 40 percent of their annual income for home energy, whereas households above 150 percent of the Federal Poverty Level pay more than 6 percent.[5] [Please note that this statement contains an error. The document cited for the basis for this statement calculates the energy burden for households above 150% of poverty as generally **less** than 6% and ranges from 6.3% for households with income between 150% and 184% of poverty to 3.1% for households with income over 400% of poverty guidelines. See page 6 of the document cited in the fn. associated with this statement in the Draft Energy Plan.]

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[3] This is not a novel proposition. California supports its California Alternative Rates for Energy (CARE) program, which provides reduced rates for low-income customers, and its Family Electric Rate Assistance (FERA) program for customers slightly above CARE program income eligibility limits through its Public Goods Charge (PGC) which also supports programs of the type envisioned in the proposed CEF: "Monies collected through the PGC fund support four program areas: low income assistance through the California Alternate Rates for Energy Program (CARE), research development and demonstration through the PIER Program, energy efficiency programs including those for low income households, and renewable energy through the Renewable Energy Program." Kudak and Anders, *Following California's Public Goods Charge: Tracking Contributions and Expenditures of the Renewable Energy Program and the PIER Program*, Energy Policy Initiatives Center, University of San Diego School of Law, September 2008, available at http://bit.ly/1AbWnbb

[4] New York 2014 Draft Energy Plan (printer friendly version) at 7.

[5] Ibid, Vol. II, at 113.

The footnote accompanying these statements notes that New York ranks second in the nation in terms of residential cost and that the State's electric cost—at 18.26 cents per kWh—is much higher than the national average—11.58 cents per kWh—citing data from the Energy Information Administration. Electric bills are not now affordable to many New Yorkers, and as a consequence they suffer frequent financial hardship, incur large debts to utilities, face service shutoff threats that create household budget crises, borrow at high interest to avoid shutoff, lose service due to shutoffs for collection purposes, and pay higher costs for late charges and reconnection fees. These circumstances are demonstrated by the monthly utility collection activity reports, which show:

- More than 1 million residential customers of investor-owned utilities in New York State were 60 days or more past-due on their utility bills in August, 2014, 29.5% more than 2005; this despite the fact that the number of residential accounts increased only 2.1% over the nine year period. The result was that the percent of residential utility customer accounts past-due more than 60 days jumped 2.6% percentage points, from 9.5% in 2005 to 12.1% in 2014.
- The amount that these customers were past-due was $745 million, a 46.8% increase versus August, 2005. The annualized increase was 4.4%, twice the 2.2% annual rate of overall consumer price inflation in the Northeast, and 150% higher than the 1.7% rate of Northeast household energy inflation.
- The average amount each of these customers owed was $739 in August, 2014, 69.6% more than in August, 2005, a 6% annual increase in arrears over the nine year period – a rate 250% higher than Northeast household energy inflation.
- More than 7 million final termination notices were sent to residential customers of investor-owned utilities in New York State during the prior twelve months ending

August, 2014 - 46.8% more than the same period in 2005. The annualized increase was 4.4%. The result was that 7.3% of residential customers were issued termination notices in 2014, versus 5.0% in 2005.

- 265,711 residential utility customer accounts were terminated in the twelve months ending August, 2014, 5.5% more than the 251,898 terminations in 2005.
- The number of residential utility customers with active deferred payment accounts (DPAs) was over 450,000 as of August, 2014, 40.6% higher than 2005. The number of customers with active DPAs rose at a 3.9% annual rate during the nine-year period.

A focus on affordability is missing from the NYSERDA CEF Proposal. To achieve the objectives established by the Commission in its May 8, 2014 Order, NYSERDA proposed four program portfolios, which NYSERDA explains were designed to complement and align with the long-term energy objectives established by the REV and Draft State Energy Plan policies:

 Market Development, which will align with REV to reduce barriers, animate consumer demand for clean energy, and enable the private markets to provide the new products and services sought by an animated consumer market;

 Technology and Business Innovation, which will catalyze the development of innovative clean energy solutions, while growing New York's cleantech sector and accelerating the development and introduction of the new technologies that will be needed to foster increased levels of greenhouse gas reductions;

 The "Green Bank" initiative that provides capital to private entities for technologies and programs that are designed to seek "market transformation" in the financial sector, leveraging public investments and reaching new markets for clean energy services; and

 NY-Sun, which seeks to create a robust and self-sustaining solar market in New York for solar photovoltaic (PV) technologies, and build a program approach for other clean technologies.

According to NYSERDA, these four programs will accelerate and expand investment in clean energy technologies. However, NYSERDA does not explain or describe how these programs will ensure affordable electric service for the millions of New York households that cannot afford the

upfront costs to participate in these programs and who struggle every month to keep the lights on. As previously noted, California's "Public Goods Charge" which supports, through a surcharge on all kWhs, programs including renewable energy and efficiency, also supports low-income bill reduction in the CARE and FERA programs. The Commission should do likewise to broaden the purpose of the CEF to include low-income affordability.

NYSERDA's CEF Proposal refers to "high overall energy costs in New York State [that] create a cost burden on all customer classes," but does not acknowledge the critically at-risk low-income consumer, as the Draft State Energy Plan does, as a sector needing special relief or consideration. There is also no recognition in the CEF Proposal of the potential additional funding that ratepayers will be required to pay for "distributed generation" and other potentially costly REV-related initiatives that are reflected in the Commission's Track One REV policy statements to date. These programs may work to shift added burdens to non-participants.[6] In addition, the CEF Proposal does not contain any specific milestones and metrics to measure success. The CEF Proposal does not reflect any discussion of the specific investment needs for low and moderate income households to respond to New York's high electric rates. NYSERDA's CEF Proposal only states that it would "[c]ontinue to provide access to clean energy for market segments, including low-income customers, which may not otherwise benefit from the new market activity."[7] But there is no assessment whether low-income customers, struggling to pay current bills, are *actually* obtaining clean energy at affordable prices. In light of the high rates, hardship and household financial stress documented above, "access to clean energy" alone is not a substitute for affordable electric service for New

[6]See *CAPUC REPORT: ROOFTOP SOLAR "NET METERING" PROGRAM BENEFITS HIGHER INCOME CUSTOMERS AND IS SHIFTING ADDITIONAL COSTS TO LOWER INCOME CUSTOMERS*, http://utilityproject.org/2014/05/20/capuc-report-rooftop-solar-new-metering-program-benefits-higher-income-customers-and-is-shifting-additional-costs-to-lower-income-customers/

[7] CEF Proposal at 8.

York's low-income customers.

Second, AARP and the Utility Project urge the Commission to specifically adopt the objective to "improve affordability" of electric service in its consideration of the CEF Proposals and specifically identify how low and moderate income households will benefit from these programs or additional programs and make their bills more affordable. If these households are unable to participate in these programs, the only potential beneficial impact is the projected effect of these programs on electricity prices. Rather than relying on projecting impacts on future electricity prices that is a function of a wholesale market that is not under the Commission's jurisdiction, AARP and the Utility Project recommend that the Commission identify specific programs that improve the affordability of essential electric service, including enhancement of low-income rates, energy efficiency assistance, and bill payment assistance programs, as identified in the Draft Energy Report, that would be funded pursuant to CEF.

The unexpended funds and the future program expenditures recommended by NYSERDA present an opportunity to design and implement improved low-income rates and a robust low-income efficiency and bill payment assistance program as discussed in the Draft Energy Plan. We recommend that the Commission adopt more robust low-income programs and expand the definition of "low income" to include households with annual income of 200% or less compared to federal poverty guidelines (similar to Massachusetts and California).[8] This effort would require that the utilities revamp and increase the funding for their existing programs, which are fragmented, relatively small compared to the need, and in need of improvement to integrate these assistance programs with efficiency and weatherization programs. The Commission should at least explore how these initiatives could be undertaken without increasing current rates.

[8] California Alternate Rates for Energy (CARE) eligibility criteria are at http://www.cpuc.ca.gov/PUC/energy/Low+Income/care.htm and California's Family Electric Rate Assistance Program (FERA) eligibility criteria are at http://www.cpuc.ca.gov/PUC/energy/Low+Income/fera.htm.

Third, we oppose the recommendation of Multiple Intervenors in their June 2, 2014 Petition that the existing surcharges be materially reduced, focusing on the unexpended funds reflected in NYSERDA's reports and proposals to revise surcharge rates so as to reduce bills of large consumers.[9] Just as the Commission apparently has deemed it appropriate to review the impact of the current and future CEF cost recovery methodology on high load customers, in order to reduce their bills, it is also appropriate for the Commission to weigh the hardships faced by low-income customers and to address them as well, with repurposed surcharge funds. The proposal to return the unexpended balances that currently exist or that may exist in the future under NYSERDA's CEF Proposal to the Multiple Intervenor customers, and the NYSERDA proposal to reduce future surcharge collections, would eliminate an excellent opportunity instead to expand low income efficiency and bill assistance programs without raising current rates. AARP supports fair and affordable rates for all customers. The ongoing REV proceeding raises considerable risks that additional costs and surcharges will be authorized to pursue new and potentially expensive investments that will appear on the distribution bills for all customers. It is likely that these additional costs and higher bills will not directly impact the ability of low and moderate income families to pay their monthly electric bill without more targeted programs and robust bill payment assistance programs. Therefore, we urge the Commission to carefully consider the opportunity to focus on the need to "improve affordability" for the most vulnerable customers in light of the recommendations of the Draft Energy Plan.

CONCLUSION

For all of the foregoing reasons, AARP and the Utility Project recommend that the Commission require NYSERDA to explicitly identify the impact of its recommendations on low to

[9] The "hardship" complained of by Multiple Intervenors, paying a surcharge of less than a penny a kWh, pales in comparison to the hardships faced by New York's low-income customers. Also, New York's industrial customers' rates are 11% *lower* than the national average, while New York's residential rates are more than 60% *higher* than the national average. See *BUSINESS GROUPS SEEK ELECTRIC RATE BREAKS AS PSC REPURPOSES $925 MILLION/YEAR* SURCHARGES**,** N.Y. Utility Project Update, November 20, 2014.

moderate income ratepayers and families, to design programs that will specifically "improve affordability" of essential electric service for these households, and for the Commission to develop more robust low-income rates and well-designed efficiency and assistance programs for low and moderate income households. Accordingly, the repurposing and review of the existing $925 million/year surcharges proposed in this proceeding should be broadened to include, as California has done, the public purpose of making service affordable, in addition to clean energy initiatives.

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Respectfully submitted,

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