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

Case 14-M-0094 – Proceeding on Motion of the Commission to Consider a Clean Energy Fund

Dear Secretary Burgess:

The Alliance for Clean Energy New York, the Association for Energy Affordability, the Clean Coalition, Columbia University Center for Climate Change Law, Environmental Advocates of New York, Environmental Defense Fund, Pace Energy and Climate Center, Natural Resources Defense Council, New York Public Interest Research Group and the Sierra Club (the Joint Commenters) submit for filing these Preliminary Responses to Track 1 Questions in the above-referenced proceedings.

Respectfully submitted,

David Gahl
Director of Strategic Engagement
Pace Energy and Climate Center

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Proceeding on Motion of the Commission in Regard To Reforming the Energy Vision	**Case 14-M-0101**
Proceeding on Motion of the Commission to Consider a Clean Energy Fund	**Case 14-M-0094**

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Response to Ruling Posing Questions On Selected Policy Issues and Potential Outcomes

Cases 14-M-0101 and 14-M-0094

July 18, 2014

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Introduction

The Alliance for Clean Energy New York, the Association for Energy Affordability, the Clean Coalition, the Columbia University Center for Climate Change Law, Environmental Advocates of New York, the Environmental Defense Fund, the Pace Energy and Climate Center, the Natural Resources Defense Council (NRDC), the New York Public Interest Research Group and the Sierra Club (the Joint Commenters), are pleased to file these comments in response to the Public Service Commission's (Commission) recent ruling entitled "Posing Questions On Selected Policy Issues and Potential Outcomes" (Ruling) issued on June 4, 2014 as part of Case 14-M-0101 Reforming the Energy Vision (REV). We appreciate the opportunity to comment. This filing complements any individual filings by member organizations.

We commend the Commission and the New York State Department of Public Service (DPS) for its commitment to engage stakeholders in a direct and meaningful way to assist the Commission in issue identification and to assist DPS staff in the development of forthcoming Staff reports. Many of our organizations have been active participants in both the REV stakeholder meetings and the REV technical conferences. We are committed to remaining active participants in this process.

A. Guiding Principles

We applaud the Commission for its effort to address the many issues in the REV proceeding in an integrated manner. While it is likely that the Commission's vision will need to be implemented in stages, it is important that the Commission articulate and shape a workable and robust system if the State is to realize the many potential benefits of the REV.

Reforming electric and gas utility operations in New York State to achieve a cleaner, more efficient, more resilient, more affordable and more sustainable future is a formidable challenge. The outcome of this effort will affect every New Yorker. The issues are not simple. The stakes are high. But the potential "rewards" – a clean, affordable, sustainable and resilient energy sector for New York State – are immense.

The range and complexity of the issues that the Commission will have to address can seem daunting. The temptation to become "lost in trees" and to lose "sight of the forest" must be resisted. With that in mind, the Joint Commenters offer the following principles as a directional map to the Commission and DPS staff against which specific policies and programs should be evaluated:[1]

1. Emissions reductions must remain central to REV's objectives and outcomes.
2. New York must preserve and affirm its commitments to energy efficiency and renewable energy.
3. Distributed energy resources (DER) should be fully valued to reflect the operational, environmental, and social benefits these resources provide to both the energy system and the public.
4. Any compensation to a Distributed System Platform Provider (DSPP) should be commensurate with its performance in addressing clear public policy objectives established by the Commission, including greenhouse gas emissions reductions and improved air quality resulting from the deployment of energy efficiency, energy conservation, renewable energy and other strategies, and should be based on a transparent system of rewards and penalties.

[1] *See also* the May 27, 2014 the NRDC-Pace-EDF-Columbia letter to PSC Secretary Burgess.

5. Customers should be empowered with the tools and information necessary to take greater control of their energy use.

We build on these principles and their potential application in our following responses to specific questions.

I. Potential REV Outcomes

While many of the goals in the REV outcomes matrix attached to the Ruling are laudable, we believe that the matrix should be simplified. A less complicated matrix and a more focused set of goals would give program implementers clearer direction. More streamlined goals would also allow the Commission and stakeholders to focus on a few key metrics and streamline data collection so as to track more clearly performance toward achieving these specified goals.

The Joint Commenters strongly support all the clean energy outcomes identified in the outcomes matrix in Category I, including reducing emissions of greenhouse gases and other regulated air pollutants, implementing aggressive energy efficiency measures, and expanding the use of renewable energy resources.

New York has already experienced first-hand the devastating effects of climate change in the form of more frequent and severe weather events, sea level rise, and exacerbated public health risks. Reducing air pollution, eliminating the wasteful use of energy, and addressing other consumptive environmental impacts must be a top public policy priority of the REV proceeding.

One of the most effective strategies for reducing emissions is energy efficiency. In this regard, we particularly want to emphasize the importance of "improving the uptake of energy efficiency measures." Energy efficiency remains one of the most cost-effective strategies for

reducing air emissions. If the Commission is serious about its articulated commitment to reduce emissions of greenhouse gases and other air pollutants, it must act to preserve and reaffirm the State's commitment to energy efficiency. We concur with the American Council for an Energy Efficient Economy (ACEEE) that robust support for energy efficiency must be part of the REV, or REV's objectives will be compromised.

Besides reducing air emissions, energy efficiency can also help lower consumer costs compared to most other supply side strategies because investments are generally less expensive than other electric resources. By intelligently targeting these investments, energy efficiency (as well as renewable energy and low-emission, high-efficiency combined heat and power (CHP) systems) can also strengthen transmission and distribution ("T&D") networks and avoid the need for new, more expensive investments in these systems.

In short, additional investment in energy efficiency supports many of the critical REV outcomes listed in the matrix, including but not limited to reducing peaks, reducing emissions, lowering bills, improving system reliability, and strengthening system resiliency.

The Commission should also take great care to ensure that emissions reductions New York has already achieved from large-scale central station power plants—driven by nationally recognized models such as the Regional Greenhouse Gas Initiative (RGGI) and other forward thinking power plant regulations for mercury, nitrogen oxides (NO_x), sulfur dioxide (SO_x), and particulate matter (PM)—are not undermined by the proliferation of smaller-scale, more polluting electric power generating sources. While our organizations strongly support greater deployment of clean DER, the Commission has a responsibility to ensure that increased reliance on distributed energy resources does not impose new environmental burdens on communities and vulnerable populations that already bear a disproportionate environmental impact.

In addition to prioritizing energy efficiency, encouraging increased deployment of clean DER should be a top priority of REV. Significant outcomes associated with a strong commitment to investment in clean DER include: installing additional renewable power; simplifying the process for connecting clean energy resources to the grid; developing innovative financing and contracting techniques for clean and renewable energy; and maintaining strong and effective incentives that complement (and facilitate) the REV's focus on market-based solutions. Investments in clean DER represent a "win-win" strategy for both local communities and the larger grid as well. Renewable energy resources, energy storage, and low-emission CHP systems located at strategic locations within a distribution system can provide substantial benefits both to the local community/host as well as the wider grid and the public at large.

The Joint Commenters also support the goal of allowing customers more control of their energy use. Various outcomes were included in matrix along these lines such as, increasing accessibility of customer energy usage information; improving system intelligence and automation: and adopting the next generation of networks and tools for enhanced customer interaction. New information technologies are emerging now that will provide all customer classes the ability to manage their energy use in more strategic ways and also enable the distribution network operator to manage the system more efficiently. Process and product innovations enabled by high-speed communications and advances in building controls and information technology will allow new applications for saving energy and enhancing productivity to flourish. Enabling these technologies, and encouraging electric customers to use them, should also be an important goal of the REV.

A. Performance Metrics

Following this simplified outcomes framework, we support New York's goal of reducing greenhouse gas emissions to 80% below 1990 levels by 2050 (80x50 plan)[2] and suggest four performance metrics for consideration by the Commission at this time: (1) a mass-based carbon metric in the form of absolute tons of carbon dioxide (CO_2,) as well as a rate-based system average pounds per megawatt hour of CO_2[3]; (2) DER adoption and market penetration; (3) lowering overall customer bills; and (4) an energy efficiency metric. We believe that these four metrics are central to the REV and should be prioritized.

1. Near- and Mid-Term Targets for the 80x 50 Goal

We applaud the draft 2014 New York State Energy Plan's 2030 emissions target and the long-term target to reduce greenhouse gas emissions by 80 percent by 2050.[4] We believe, however, that New York should establish near- and mid-term targets, for 2018 and 2021, in order to meet the State's goals, as pictured below.

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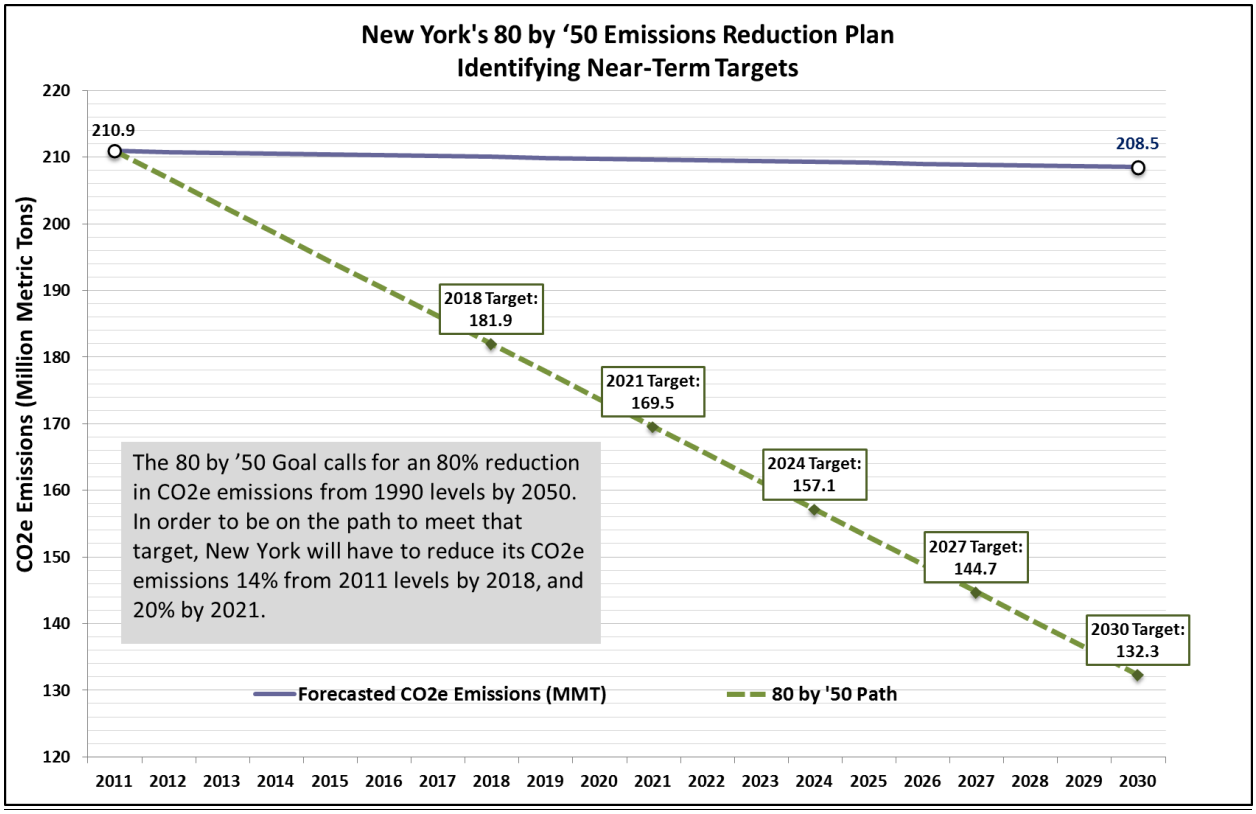
[2] Exec. Order No. 24 (2009), XXXI N.Y. Reg. issue 35 (Sept. 9, 2009) *available at* http://www.governor.ny.gov/archive/paterson/executiveorders/eo_24.html.

[3] Since RGGI only covers large electric generating units of 25 MW and above, it is imperative that some regulatory construct be established to avoid net increases in carbon from smaller sources even as the RGGI cap declines. We believe this metric could be established and tracked in a manner that does not result in overly burdensome administrative requirements while still providing the data essential for regulators to avoid such unintended environmental outcomes. Along with this metric, the state should ultimately explore how to monitor and quantify *net* emission impacts of the REV across the energy system, which would not only catalogue any emissions increases from increased DER deployment on the distribution system, but also any resulting decreases in emissions from central power plants. NYSERDA is well positioned to provide such analysis.

[4] *See* NYSERDA, 2014 DRAFT STATE ENERGY PLAN at *28, http://energyplan.ny.gov/-/media/nysenergyplan/2014stateenergyplan-documents/2014-draft-nysep-vol1.pdf. We note that reductions should be based on actual *carbon dioxide equivalent* reductions and not carbon intensity.



2. CO_2 Tracking System

In order to meet the State's 2030 and 2050 emissions reduction targets, and other public policy goals, we recommend the adoption of a metric that tracks both the tons of CO_2 emitted (mass) *and* the system average pound per megawatt hour of CO_2 (rate). The Commission, with assistance from the Department of Environmental Conservation (DEC) and other relevant agencies, should track electric system performance related to greenhouse gas emissions. These metrics could be calculated based on a number of factors, including but not limited to: a set of affected units; the emissions from those units; the quantity of electrical output (as well as thermal output in the case of CHP) from those units; and a time period for which the average is calculated (including a baseline year). In addition, in order to track effectively and mitigate

disproportionate local impacts—particularly in environmental justice (EJ) communities—locational and temporal components to the tracking should be included.[5]

3. DG Adoption and Market Penetration

Reporting on carbon performance metrics should be complemented by reporting on the growth and integration of distributed generation (DG) units (solar PV, CHP systems, energy storage, fuel cells, etc.) installed and operated in New York during a given period of time. This metric should include information such as: (1) on the absolute number of units installed; (2) where they are installed; (3) the time it takes to integrate DG units onto the system; (4) the maximum output of the units; (5) the electricity generated during a defined period; and (6) a percentage showing DG's contribution to the grid in megawatt and megawatt hour terms, as well as its contribution to overall system efficiency. DPS should develop an existing baseline for both the prevalence of DG generators that feed now, or could feed the grid, with rule changes. DPS, with the cooperation of its sister agencies, should collect and report this data annually.[6]

4. Lowering Customer Bills

A third metric for tracking performance should be lowering customer bills. Using customer bills as an indicator is a more appropriate measure than electric rates. Consumers pay bills, not rates. Even though electric *rates* could potentially rise as the result of utility and/or DSPP infrastructure investments and DER purchases, under a well designed and implemented

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[5] In accordance with DEC Environmental Justice Policy CP-29, DEC has already compiled a map of EJ communities, which could serve as a useful overlay. This map is available at http://www.dec.ny.gov/public/899.html.

[6] For an example of a similar metric in use in Illinois, *see* Ameren Illinois, Advanced Metering Infrastructure Report (April 2013), http://www.icc.illinois.gov/downloads/public/AIC%20AMI%20Plan%20Update%20-%20April%202013%20Report.pdf; Commonwealth Edison, Smart Grid Advanced Metering Annual Implementation Progress Report, Attachment 1 (April 2013), http://www.icc.illinois.gov/downloads/public/02%20ComEd%202013%20AIPR_Attachment%201%20Redacted.pdf

REV regime electric *bills* should decline for many consumers based on decreased fuel consumption and efforts to use less energy. Further, bill impacts should be tracked by customer classes (e.g. residential, multi-family, commercial, industrial), as well as by income segments of the ratepayer base, low, middle and high-income customers. This metric would also need to account for fuel price changes, both as a result of the REV and the impacts of clean energy investments on fuel prices, and fuel price changes occurring independently. This issue of attribution/correlation is important to include in order to avoid drawing flawed conclusions on the impacts of the REV.

5. Energy Efficiency

We believe that the 80x50 time horizon is essential to ensuring certainty for utilities, building owners, and contractors to invest in zero emissions resources such as energy efficiency. This commitment, however, must be coupled with targets to capture all cost-effective energy efficiency across the system. Based on historical performance and various analyses, a goal of meeting roughly 20% of forecasted demand in 2025 though energy efficiency (which equates to roughly 2% of annual electric demand being met by efficiency over a 10 year period) is reasonable and achievable and should be adopted by the Commission in some form. Further, guidelines should be set for a broad range of system efficiencies, including those for utility operations and maintenance and line loss avoidance.[7]

Programs should also be designed to target sectors such as Affordable Multi-Family Housing that have traditionally been underserved and represent a vast reservoir of cost-effective efficiency—a sector in which the value proposition for energy savings in heightened, as low-

[7] For examples of performance metrics related to system efficiencies, *see* section (f) of the Illinois Energy Infrastructure Modernization Act (EIMA) (Public Act 097-0616), 220 ILL. COMP. STAT. 5/16-108.5.

income families can spend up to 20% of their income on energy, compared with only 4% for the average household.[8]

II. Optimal Ownership Structures for Distributed Energy Resources

A. Market power versus market animation

To accelerate DER deployment, the Staff Report proposes a framework in which DER assets may be owned, operated, and financed by the utility or utility affiliate.[9] Open access to this market by the utility presents several potential pitfalls such as the utilities taking advantage of superior access to information, existing customer relationships and its control of the distribution system in a manner that stifles competition. That said, it could also present several opportunities to encourage creative competition and potentially lower overall costs.

Given the complexity of this debate and the lack of adequate information upon which to base an informed decision, the Joint Commenters decline to answer this question at this time, although individual organizations have opined on this question in separately submitted comments. We encourage DPS staff to continue to gather facts and evidence, look at experiments in other jurisdictions, and provide more information to the parties to better inform future discussions.

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[8] The Benningfield Group, prepared for the Energy Foundation, "US Multifamily Energy Efficiency Potential by 2020," 2009 at 4, available at: http://www.benningfieldgroup.com/docs/Final_MF_EE_Potential_Report_Oct_2009_v2.pdf (last visited July 17, 2014).

[9] Staff Report at 26-28.

III. DSPP Identity

A. The DSPP Should Initially Act as Both Broker and Owner/Manager of Distribution.

The Joint Commenters believe that initially the DSPP should act as both a broker and as the owner or manager of distribution. Given the utilities' high degree of involvement in managing the distribution system, they should initially act as the DSPP. The Staff Report reflects this view and suggests that utilities occupy the DSPP role to start.[10] However, this should not preclude the possibility of a third-party entity taking over the duty of a DSPP in the future, or a third party taking over the duty of several DSPPs.

One proposal that may have merit and should be evaluated as the REV moves beyond its initial stages is the creation of an Independent Distribution System Operator (IDSO). Under this model, an independent entity would serve the distribution markets similar to the New York Independent System Operator (NYISO) serves the wholesale markets. While it may not be feasible to create such an entity under the current REV timeframe, practical experience with utilities performing the DSPP function in a limited way may support the case for the creation of an IDSO.

B. The Commission must establish a new method for compensating utilities and DSPPs.

The Commission must fundamentally change the way utilities are compensated, as well as carefully evaluate how the DSPP would be compensated. It is important to separate these two compensation mechanisms so that the DSPP role could be filled by a future third-party entity without requiring a new compensation approach. This change may include a new tariff structure

[10] Staff Report at 25.

for utilities, and a percentage cut of each transaction for the DSPP in its brokerage role. Ideally, this new compensation structure would control capital costs and maximize environmental benefits, in contrast to the current rate system that simply encourages utility capital investments to maximize profits.

The utilities must still retain responsibility for the safe and secure operation of the grid. They also are the agent largely responsible for grid capital investments. The development of a broad array of new applications requires investments that will support this enhanced functionality. The Joint Commenters also urge the Commission to closely scrutinize the inter-dependencies of utility capital investment plans with the goals of the REV to enable DER as a dynamic asset on the system.

In the early years there should be targets, monitoring and evaluation on the extent to which the grid is becoming more amenable to not only accepting DER, but utilizing DER as a strategic asset that improves system efficiency, lowers investment costs, enhances resiliency and offers greater opportunity for customer responsiveness to changing grid conditions.

C. At least to start, utilities must play both broker and manager/owner role.

Distribution services costs are largely driven by customers, kilowatts, and miles. Having a DSPP integrate DER into system planning would effectively allow the utility/DSPP entity to meet customer demand while preventing unnecessary increases in customer costs. Practically speaking, the utility/DSPP must play both roles of broker and owner at the outset. First, too many issues arise regarding the sharing of data between multiple entities. Second, there is a fear that consumer costs associated with a separate utility and DSPP entity would be hard to control.

Third, with multiple entities there must be incentives for two competing entities to work together on matters related to system planning.

Just as multiple investor-owned utilities currently serve New York State, multiple DSPPs may also serve different areas. The Commission needs to set minimum standards of behavior for all DSPP activities. The Commission must also closely regulate the DSPPs as they foster a workable market so that they do not push other players out of the market or otherwise exercise market power.

IV. Benefits and Costs

A. DER are currently not adequately compensated for the benefits they bring to the electric system.

In order to accelerate the integration of clean energy resources into the grid, the Commission must develop accurate valuations for the benefits and costs of DER. Because the environmental and grid resiliency benefits of DER have not been adequately valued and monetized, utilities have tended to view DERs as disruptive and burdensome. The Commission needs to better incentivize utilities to make investments through an accurate valuation of DER benefits and costs, to prevent stranded asset costs from being passed on to the ratepayer. These valuations should be made from the perspective of the ratepayer in terms of overall societal benefits. However, care should also be made to include benefits and costs to the utilities, to give them the impetus to include more DER in their long term planning processes.

B. The Commission should work with consultants to identify quantifiable methods for valuing DERs, taking several factors into account.

The Commission should work with outside consultants to fairly value the benefits and costs of DERs. Such an assessment of DER costs and benefits should include utility avoided costs and, separately, social benefits including grid resiliency and environmental benefits. In calculating utility avoided costs, the value of both avoided energy and capacity purchases should extend for the lifespan of the DER used to displace conventional/central generation. Avoided cost valuation might also include the value of displacing or delaying the need for additional utility infrastructure. Calculating the value of having incremental DER generation capacity is crucial because it reduces the utilities' capacity procurement obligation from the wholesale market to meet predicted peak loads. In this regard, the benefits of having DER generation near loads should also be calculated, including the value of minimizing line loss and providing ancillary services nearer to the site of energy consumption. Such benefits also often allow deferral of otherwise needed transmission and distribution upgrades or additions. Studies should be done to assess the monetary value of predicted grid resiliency and reliability, especially for the case of DER supporting critical infrastructure.

Long-term environmental benefits should also be included in the assessment of benefits and costs. This should include the value of avoided greenhouse gas emissions as well as avoided SO_x, NO_x, and PM emissions.

How the Commission decides to structure the ownership/operation model for DSPPs may in turn shape what benefits and costs should be valued. For example, if the DSPP model calls for utility ownership of DER assets, costs of DER installation and maintenance should be calculated and integrated into applicable rates. However, if DER are not owned by utilities, then only the societal benefits should be applicable to utilities because, in the case of a customer-owned

generation units with a set amount of output, the benefits to the utility (as well as societal benefits) would be the same.[11]

A valuation study should take into account some benefits and costs that are location-variable, e.g., voltage control near higher load areas. While the actual values will vary, the most crucial aspect is having a uniform methodology in assessing such values. In addition, an adequate study is only as strong as the inputted data. Care should be taken to allow as much transparency as possible for all the stakeholders, while protecting data privacy.

For a more detailed guide to DER benefits and costs evaluation, in the context of solar power, see *A Regulator's Guidebook: Calculating the Benefits and Costs of Distributed Solar Generation*.

V. Transition for Clean Energy Programs

A. Demonstrated Success of New York's Clean Energy Programs

New York State has a long been a leader in promoting clean energy. These efforts have resulted in tremendous success. Based on past Commissions setting ambitious but achievable clean energy targets, New York's investment through the Renewable Portfolio Standard (RPS) resulted in nearly $3 billion in direct investment in clean energy projects, and nearly 2,200 MW of new renewable energy capacity in New York.[12] Additional investments in energy efficiency from the Energy Efficiency Portfolio Standard (EEPS) have resulted in more than $3.2 billion in total financial savings, the creation of more than 10,000 jobs and more than 2.13 million MWhs

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[11] Jason B. Keyes & Karl R. Rábago, *A Regulator's Guidebook: Calculating the Benefits and Costs of Distributed Solar Generation* 37 (Interstate Renewable Energy Council Working Paper, Oct. 2013).
[12] NYSERDA NEW YORK STATE RENEWABLE PORTFOLIO STANDARD ANNUAL PERFORMANCE REPORT (March 2014) at 2, *available at* https://www.nyserda.ny.gov/-/media/Files/Publications/PPSER/NYSERDA/2014-RPS-annual-report.pdf.

of electricity saved.[13] These program and policies have contributed significantly to New York's position one of the most energy efficient states, ranking as the most efficient state in primary energy use per capita in 2010.

B. New York Should Establish Energy Efficiency and Renewable Energy Procurement Targets

New York State is widely recognized as a national leader in both energy efficiency and renewable energy. This leadership did not just evolve over night. It is a legacy that has evolved and grown over the last three decades. It is a legacy built on the bipartisan leadership of Democratic and Republican governors, and the vision and commitment of this Commission to provide the financial resources necessary to attract and sustain private sector investment in energy efficiency and renewable energy.

The Commission now seeks to move to a more market based strategy for promoting energy efficiency and clean energy. While the Joint Commenters do not object to the goal of developing more market based strategies to sustain investment in energy efficiency and renewable energy, we do caution the Commission not to rely solely upon the market to achieve its energy efficiency and renewable energy goals. Nor do we believe it realistic to assume that such market based programs will emerge quickly.

We call to the Commission's attention the June 2014 study issued by ACEEE entitled "The Future of the Utility Industry and the Role of Energy Efficiency" which notes studies indicating that there is little evidence to support the premise that relying on private market actors

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[13] Jackson Morris and Jordan Stutt. *Energy Efficiency in New York: Midcourse Status Report of '15 by '15*. Pace Energy and Climate Center, Pace University School of Law, 2012. http://energy.pace.edu/publications/new-yorks-renewable-portfolio-standard-where-here

to provide energy efficiency is superior to an approach based on strong governmental support for energy efficiency investments.[14] Californians saw firsthand the negative outcomes that can result when regulators leave the crucial role of resource portfolio management exclusively to unregulated market participants.[15] And as Harvard's Bill Hogan has noted, in order to be effective, energy efficiency must be driven by both policy and programs.[16] New York's System Benefits Charge (SBC), Renewable Portfolio Standard (RPS), and Energy Efficiency Portfolio Standard (EEPS) programs – all of which were established and funded pursuant to Commission Orders – embody such policies and programs. While by no means perfect these programs have been critical to New York's emergence as a national leader in energy efficiency and clean energy.

The Joint Commenters concur with ACEEE's conclusion that "(I)t is true that market competition can be useful, but if previously successful utility and other public-purpose energy efficiency programs are discontinued to rely exclusively on the market, the result will likely be less investment in efficiency and an increased need for more expensive resources."[17] Clearly that is not the Commission's objective.

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[14] ACEEE, THE FUTURE OF THE UTILITY INDUSTRY AND THE ROLE OF ENERGY EFFICIENCY (June 2014) at viii, http://www.aceee.org/sites/default/files/publications/researchreports/u1404.pdf.

[15] Cavanagh, Ralph. *Revisiting "the Geniusof the Marketplace": Cures for the Western Electricity and Natural Gas Crises*. The Electricity Journal, June 2001. In the early years of restructuring, funding for customer-funded electric energy efficiency programs nationwide decreased dramatically. In nominal dollars, it decreased from about $1.8 billion in 1993 to just $900 million in 1998. Energy efficiency program investments were seen as unnecessary in competitive retail markets; pricing and the market would guide customer choices about efficiency. Funding nationwide finally rebounded, reaching $1.35 billion in 2003, as states adopted public benefits programs and other means of supporting energy efficiency – particularly in the wake of the California energy crisis. In 2013, budgets for electric and natural gas utilities hit a high of $7 billion and investments are expected to continue their growth.

[17] ACEEE, THE FUTURE OF THE UTILITY INDUSTRY AND THE ROLE OF ENERGY EFFICIENCY (June 2014) at viii, http://www.aceee.org/sites/default/files/publications/researchreports/u1404.pdf.

The Joint Commenters recommend that the Commission maintain a ten-year commitment to energy efficiency and renewable energy. This commitment would send a strong market signal that would provide the certainty to potential investors and clean energy companies of New York's intent to retain its leadership in the clean energy economy. Such a commitment would be consistent with the timeframe already established in Governor Cuomo's NY Sun program. Moreover, it would provide a reasonable period of time for the evolution and emergence of potential market-based energy efficiency and renewable energy programs.

C. A Key Role for Utilities in Planning

During this interim, the Commission and DPS Staff appear to envision a larger responsibility for the utilities in the delivery of energy efficiency programs. If the utilities are to assume a lead responsibility for these programs, it is essential that new regulations recognize that distribution utilities should have a central role and greater responsibilities for knowing the capabilities and limitations of their own distribution grids, planning DER solutions for addressing both bulk system and local area needs, guiding DER to optimal locations on the grid, and procuring and operating optimal portfolios of DER to meet target levels of local grid resilience.[18] We believe that these targets should ultimately be guided by strong public policy goals, including the state's commitment to climate pollution reductions. In addition to the Local Transmission Plans already provided to the NYISO and the Commission, utilities should be required to submit Distribution Resources Plans for approval by the Public Services

[18] *See also* Clean Coalition comments.

Commission. These Plans would detail the DSPP's proposed optimal portfolio of DERs to cost-effectively meet state goals, including targeted levels of reliability at the substation level.[19]

D. A Key Role for The Commission, NYSERDA and Other Stakeholders Towards Transition.

In addition, the Commission should also require independent analysis, potentially guided by the New York State Energy Research and Development Authority (NYSERDA) with input from a broad spectrum of stakeholders, about what is technically achievable in each territory based on current customer participation, efforts to date, and untapped pockets of energy efficiency potential. The analysis should also consider the maximum achievable potential based on scenarios with increased participation rates and more innovative programs. As an example, based on the Energy Efficiency and Renewable Energy Potential Study published as part of the Draft 2014 State Energy Plan, the achievable energy savings from the affordable multi-family housing sector has great promise

Regulators should develop several metrics to track actual market development. Metrics could include an overall estimate of public and private investment in clean energy technologies, rates of customer participation in state and utility run clean energy programs, and the price of electricity (both wholesale and retail).

These metrics could be used to help make decisions on whether clean energy markets have matured enough, and demonstrated sustained growth, over the course of a defined period of time to trigger a scaling down of direct subsidies from ratepayers. We note, however, that levels of market activity can swing back and forth in a very short period of time. A decision by

[19] California's AB 327 takes a major step in this direction by requiring utilities to develop Distribution Resources Plans by July 2015 to guide DERs to optimal locations on the distribution grid, and allowing utilities to ratebase only distribution grid investments that yield net benefits for ratepayers. See also the Clean Coalition's comments.

regulators to decrease ratepayer support of clean energy programs should be based on sustained evidence of market development, during a multi-year time frame, as well as an analysis of projected clean energy market growth.

Our organizations agree with the Staff Report, which notes that New York State must maintain its work to promote energy efficiency for lower income customers and that market strategies are unlikely to reach this population.[20]

VI. Enhanced Services

A. The Commission should clearly define "Enhanced Services."

Absent a clear PSC definition of "enhanced services" (or value-added services), we will assume for the purposes of these comments that the term means services for which customers pay above and beyond their basic service charges. Enhanced services might include such things as mobile outage notifications, efficiency meters for appliances, demand response programs and tools, loyalty programs, energy from renewable sources, among others. The lack of a clear-cut definition for enhanced services could pose issues of regulatory uncertainty for the DSPP and other third party providers. In the past, the Commission has refrained from defining "value-added" aside from its common usage as something more than standard, and has retreated to a case-by-case qualitative assessment of what might be considered an enhanced service. Differing standards between cases as to what qualifies as an enhanced service means a lack of a market certainty and an inability to form competitive markets for such services.

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[20] *See* Staff Report at 21.

B. The Commission should set a minimum standard for customer education and notification about enhanced services.

The Commission should ensure customer protections through minimum standards for customer education and notifications by enhanced services providers. The fear is that the DSPP or other enhanced services providers may potentially package multiple non-essential services together with basic services and offer them to customers who may not understand or benefit from the enhanced services. This could result in some customers paying for unnecessary enhanced services, a particular concern for low-income customers. Such bundling of services already occurs in the context of Energy Services Companies (ESCOs), in some instances with a high number of customer complaints regarding their marketing practices and the need for greater market transparency.

Particular care should be given to the regulation of customer outreach with respect to enhanced services. While we support greater control by customers of their energy usage, we must also make sure that customer education and customer protections are central when engaging in the enhanced services markets.

C. The Commission should recognize the potential for service inequities and protect against the utilities or the DSPP providing unnecessary services.

Allowing utilities or the DSPP, or other third party providers, to provide enhanced services may also create service inequities in which some customers who can afford enhanced services will benefit at the expense of other customers who can only afford bare minimum services. The Commission must maintain its strong tradition of protecting ratepayers from fraud, abuse, and unjust rates. A danger exists in allowing utilities as the DSPP and other third party providers unfettered access to ratepayers without strict oversight. With respect to the utilities and

revenue streams in particular, the Commission must be cautious in the way revenue requirements are calculated when enhanced services are factored in, to avoid having such costs imputed on low-income customers without them seeing any of the tangible benefits associated with such costs. For example, with a data center that purchased enhanced services requiring additional infrastructure, costs of such infrastructure may be calculated into the utility's revenue requirements and passed on to customers who cannot afford the enhanced services, yet who will realize no benefit from additional infrastructure. Therefore, in order to protect ratepayers from unfair market practices and higher-than-needed utility bills, the Commission should clearly define the term "basic services" and separate it from non-essential enhanced services. We believe that these issues can and should be addressed in program design, and offer our support.

VII. Access to Data

A. The DSPP and or the utilities should be required to give access to data to third-party providers in order to create an open and transparent market.

Competitive markets benefit from open and transparent access to data. Access to customer data will be crucial to allowing robust markets around energy services. Insofar as a competitive market requires a certain measure of transparency and access to data, the DSPP should be required to give data access to third-party service providers. While open access is key to market innovation, customer protection is also a major consideration. Trust in the market, and trust in the service providers must also be protected. The Commission should work hard to maintain balance across these concerns. In addition, as the Commission's overall policy goal remains the protection of reasonable customer rates, steps should be taken to give customers a greater ability to engage in price comparison. Customers should have the ability to compare the rates they pay with the prices offered by other suppliers, so that they are not hamstrung into

sticking with one provider for lack of knowing any better. These issues are currently before the Commission with respect to ESCOs, but the outcome will have a direct impact on the way DSPPs may be required to provide data access.[21]

B. Confidentiality with respect to business transactions should only last as long as needed to secure the transaction.

Although there exist many rules regarding customer data, there should not be such limitations on the release of information after transactional dealings with the utility or DSPP. In order to allow open and transparent markets the Commission should require that all transactional information be made available after the transaction has been secured. Data should be protected, where the purpose of the data is to secure better prices and services for the customer. Care must also be taken to protect crucial internal utility information, for security purposes. However, as soon as the immediate need for confidentiality ends, the data should become open. A distinction must be made between privacy data and market data.

VIII. Other Issues

The following section addresses several other issues to be considered including: 1) the role of the Commission and the role of stakeholders in creating the DSPP market rules, 2) the need for close New York State interagency cooperation as REV takes effect, and 3) removing existing regulatory barriers.

[21] *See* Case 12-M-0476, Order Taking Actions to Improve the Residential and Small Non-residential Retail Access Markets 10 (Feb. 25, 2014); Case No. 12-M-0476, Order Granting Requests for Rehearing and Issuing a Stay (Apr. 25, 2014).

A. Creating DSPP Market Rules.

The Joint Commenters believe the creation of a consistent set of markets rules under which the DSPPs operate will be very important. If the Commission intends to have the DSPPs operate as "mini-ISOs", the market rules under which they operate could be used to exclude certain technologies or clean energy efforts, or significantly discourage participation in certain activities. We encourage the Commission to provide guidance related to DSPP market rules, and require a meaningful role for stakeholders to participate in the creation of these rules.

B. Interagency Cooperation.

We encourage the Commission and DPS staff to work closely with the DEC as the proceeding progresses. Interagency cooperation, such as the agencies demonstrated with the creation of the Regional Greenhouse Gas Initiative, is likely to result in the identification of roadblocks, and permitting issues that could hurt the implementation of REV. The DEC may also have useful data about distributed generation performance and locations that would be helpful in tracking DER proliferation and performance.

The Joint Commenters also reiterate our call for the Commission and DPS staff to coordinate with the DEC and work to finally promulgate of emissions standards for distributed generation. While we are encouraged about the prospects of unleashing the potential of DER into the system, if the focus is changed to exclusively removing market barriers to distributed resources without determining what's clean, this could lead to the deployment of units that would not improve the current emissions power profile. Removing these units at some later date would be difficult and costly as is the case with the current fleet of inefficient and highly polluting emergency generators.

C. Removing Regulatory Barriers.

The stakeholder process on Track 1 identified many regulatory barriers to the deployment of DER. As a first step, some of these barriers could be eliminated. For example, many parties in the stakeholder discussions identified utility standby rates as a significant barrier to installing many distributed energy resources. Standby rates are designed to capture the utility's cost of services when a user's load exceeds their DER capacity, or when a user's DER is not available for some reason. These rates are charged because utilities must invest in enough distribution capacity to provide service when a DER generation is insufficient or offline.

As a first step for the Commission, the Joint Commenters recommend revisiting standby rates and reconsidering certain calculations to reflect the probabilistic nature of assets on the grid much the same way utilities view their own assets. While we recognize the need for utilities recover their costs, the current formulae should be revisited to more accurately reflect system costs. We also recommend the Commission extend the current exemption from stand-by charges for "designated technologies," including solar, fuel cells, and other renewables, which is scheduled to expire on May 31, 2015. The Commission should extend this exemption at least for the duration of the REV proceeding.

D. Consistent Market Signals at the Wholesale and Retail Level.

The Joint Commenters also seek to ensure that consistent market signals are sent between the markets managed by the NYISO and the new markets envisioned by the Commission at the distribution level under the REV. Inconsistent market signals at the distribution level and in the bulk power markets will impede New York's progress towards its public policy goals. The needed changes will be two-way, ensuring that the new markets contemplated by the DSPPs

conform to existing NYISO market rules, but also consider how new products offered at the DSPP level should influence the wholesale market rules.