

January 20, 2017

Via Electronic Filing

TO:

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New York State Public Service Commission
Empire State Plaza Agency Building 3
Albany, NY 12223-1350

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**RE: Notice Soliciting Comments Concerning Community Distributed Generation
for Low-Income Customers (Case 15-E-0082)**

Dear Secretary Burgess,

Please find comments of the Alliance for a Green Economy, Binghamton Regional Sustainability Coalition, Citizens' Environmental Coalition, Coalition for Community Solar Access, Co-op Power, DE Squared, New York Solar Energy Industries Association, Sane Energy Project, Solstice, Sullivan Alliance for Sustainable Development, and Vote Solar ("CDG Stakeholders") in response to the *Notice Soliciting Comments Concerning Community Distributed Generation for Low-Income Customers* (15-E-0082), which was issued on December 5, 2016.

Respectfully submitted,

/s/ Sean Garren

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Introduction

On December 5, 2016, the Department of Public Service Staff (“Staff”) solicited comments relating to its development of a White Paper concerning Community DG for Low-Income Customers (“Solicitation”). Collectively, the Alliance for a Green Economy, Binghamton Regional Sustainability Coalition, Citizens’ Environmental Coalition, Coalition for Community Solar Access, Co-op Power, DE Squared, New York Solar Energy Industries Association, Sane Energy Project, Solstice, Sullivan Alliance for Sustainable Development, and Vote Solar (“CDG Stakeholders”) are pleased to submit the following comments in response to the Solicitation.

The CDG Stakeholders are a diverse group of organizations that support measures to increase access to renewable energy opportunities for electric consumers in New York. Throughout the progress of Case 15-E-0082, the Commission’s docket for exploring community distributed generation (“CDG”), the organizations jointly submitting these comments have supported with enthusiasm the general purpose of CDG, which is to create opportunities for New Yorkers who are not in a position to pursue onsite solar projects for their homes or buildings to directly participate in and benefit from distributed solar energy projects. Moreover, we support efforts to expand access to solar for low-income customers. The CDG program has the potential to expand renewable energy access for many customers who otherwise may not be able to take advantage of the new clean energy economy.

Comments

a. Staff’s Report on the Collaborative Regarding Community Distributed Generation for Low-Income Residential Customers

Fully enabling low-income customer participation in the transition to greater renewable energy generation requires policies and programs that are specifically designed to address the unique barriers faced by these communities. In its July 17, 2015 Order, the Public Service Commission (“Commission”) directed the Staff to convene a collaborative (“CDG Low Income Collaborative”) to identify barriers to low-income customer participation in the new CDG program, and ways to remove those barriers. On August 15, 2016, the Staff issued a report that recommended the CDG Low Income Collaborative be suspended, and giving notice that the Staff would develop a whitepaper to further explore the issues that the CDG Low Income Collaborative

had discussed at length. The CDG Stakeholders support Staff's desire to develop a whitepaper on the important and complex issues relating to how low-income communities can participate in CDG projects. However, we have concerns about Staff's conclusions in the August 15 Report and the manner in which the Collaborative's work was largely dismissed.

In its August 15 report, Staff wrote, "Although, [sic] the Collaborative spent a great deal of time and effort investigating the barriers to low-income customer participation in CDG projects, workable solutions have not arisen that would overcome those barriers."¹ The Staff's August 15 report also referred to recent actions the Commission took that relate to low-income customers, in various proceedings. The CDG Stakeholders disagree with Staff's characterization of the CDG Low Income Collaborative's work as lacking workable solutions. In fact, the Collaborative achieved very substantive recommendations after thorough exploration of various issues. The CDG Low Income Collaborative's recommendations were not adequately conveyed in the Staff's report.

In addition to its report on the efforts of the Collaborative, on August 15, 2016 the Staff also released a Summary of the Collaborative Working Group Reports Regarding Community Distributed Generation for Low-Income Customers ("Summary Report").² The Summary Report itself is 58 pages long and contains synopses of findings and recommendations from the five working groups that each met many times to examine and address complex issues. The Summary Report details the tremendous effort undertaken by all of the working groups to find ways to break down barriers to low-income customer participation in CDG. For example, the Financing Working Group identified a number of options for reducing barriers to financing, which is one of the most significant barriers. Among the options is utilizing *existing* product offerings of the New York Green Bank. The Financing Working Group also recommended the establishment of a task force

¹ New York State Public Service Commission, Case No. 15-E-0082, Proceeding on Motion of the Commission as to the Policies, Requirements and Conditions for Implementing a Community Net Metering Program, Staff Report on the Collaborative Regarding Community Distributed Generation for Low-Income Residential Customers (Aug. 15, 2016), 12 (*hereinafter* "Aug. 15 Collaborative Report").

² New York State Public Service Commission, Case No. 15-E-0082, Proceeding on Motion of the Commission as to the Policies, Requirements and Conditions for Implementing a Community Net Metering Program, Summary of the Collaborative Working Group Reports Regarding Community Distributed Generation for Low-Income Customers (Aug. 15, 2016) (*hereinafter* "Summary Report").

to continue researching and developing solutions for financing CDG projects serving low-income customers. These are just two examples of the host of very reasonable and very workable solutions that are outlined in the Summary Report. Other workable solutions relate to topics such as the secure exchange of customer data between the utilities and CDG operators; low-income customer identification and outreach; incentives; and consumer protection.

While the CDG Stakeholders support the Staff in developing a whitepaper to continue to explore the issues relating to low-income customer participation in CDG projects, the Staff should build off of the good efforts of the Collaborative and continue to engage with those stakeholders. As outlined in the Summary Report, the Staff can also look to other states that have demonstrated successful strategies for including low-income customers in CDG. The CDG Stakeholders look forward to continued opportunities to engage in finding ways to overcome barriers to low-income participation in CDG projects as Staff develops its whitepaper.

b. Role of Utility Sponsored Community DG Projects

As participants of the CDG Low Income Collaborative, many individuals from the organizations jointly submitting these comments spent a great deal of time and effort working to find ways to overcome barriers to low-income participation in CDG projects. The CDG Low Income Collaborative developed a number of ideas for breaking down barriers, many of which were arrived at through group consensus. Notably, the role of utilities in sponsoring CDG projects was not a topic that was discussed, because the REV Track One Order had stated that as a general rule, utility ownership of distributed energy resources “will not be allowed unless markets have had an opportunity to provide a service and have failed to do so in a cost-effective manner,”³ and clearly no market failure could be demonstrated as the market had not yet begun.

Today, the CDG market in New York remains very much in its infancy – for all customers. In fact, to the CDG Stakeholders’ knowledge, only a small number of CDG projects have been installed and are operating successfully in New York to date. Uncertainty surrounding the New York marketplace for CDG is limiting the availability of CDG for all customers. Issues relating to interconnection are affecting all CDG project developers. Until the framework for the Value of

³ Case 14-M-0101, Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision. Order Adopting Regulatory Policy Framework and Implementation Plan (also referred to as the “Track One” REV Order), February 26, 2015, page 68.

Distributed Energy Resources (“VDER”) is finalized, tariff structures are in place, and interconnection processes are streamlined, the entire CDG market will remain on hold in New York.

Given the underlying policy as laid out in the REV Track One order, any consideration of utility sponsorship of CDG implies a presumption that there is a market failure; that the private sector has proven unable to serve a particular market segment. As the CDG market has yet to launch at any meaningful scale in New York, the CDG Stakeholders believe it is far too early to deem the CDG market a failure for low-income customers. The Commission risks undermining confidence in the CDG market, and setting a precedent that erodes confidence in REV markets broadly, if it assumes a market failure where there has been little or no opportunity for third parties to animate the marketplace.⁴

The CDG Stakeholders believe that the Commission should first focus on removing barriers to market development to enable market participants to develop CDG projects to serve low-income customers. This pathway will support the goals of REV by enabling the development of a sustainable ecosystem of developers, financiers and customer service operators that will be more responsive to market and customer needs. New York should evaluate the best way to support project economics, provide credit enhancements and other financing structures, and streamline access to customer information so that the private sector can efficiently serve the low-income customer sector.

Organizations that seek to serve low-income customers via the CDG program are identifying and seeking ways to overcome barriers to serving these customers. For example, a coalition of organizations has identified the need for a waiver of the ten-member minimum for CDG projects, for projects located on properties with multiple units.⁵ Such a waiver may increase

⁴ The Coalition acknowledges there may be certain functions the DSP or a utility can provide in helping to facilitate market development. However, these functions should be limited to those that cannot be performed by non-utility parties or functions whose principal effect is to facilitate growth and operation of markets that satisfy the requirements discussed in the Track Two Order. Further, any such proposals should be properly filed with the Commission for comment by all interested stakeholders before Commission approval. See *Order Adopting a Ratemaking and Utility Revenue Model Policy Framework* at 40 (May 19, 2016).

⁵ Case No. 15-E-0082, Joint Request of the City of New York, Solar One, GRID Alternatives, NRDC, the Association for Energy Affordability, and EDF to Waive the Minimum Membership Requirement for Community Distributed Generation Projects Sited at Properties with Multiple Residential Units (Sept. 1, 2016).

the ability of low-income customers to participate in the CDG program, and enable greater community engagement in the development of local clean energy. Other examples are found in the Energy Democracy Alliance's *Community Solar Case Studies* report, which documents case studies of CDG projects that various groups are working to develop across New York State for low- and moderate income communities, grassroots organizations, farmers, schools, first responders, and other stakeholders.⁶ This report also outlines barriers and a variety of recommendations that the Commission and other State entities can implement in order to smooth the way toward CDG projects for low-income communities, such as creating specific incentives for low- and moderate-income customers to participate in CDG projects; providing innovative financing structures; and ensuring the final rule for VDER improves access and accelerates CDG development.⁷ Efforts such as this, by organizations actively seeking to serve low-income customers, should be encouraged. These types of efforts are the hallmark of the solar industry: thinking creatively to overcome barriers. The industry should be given support to continue efforts like this, instead of declaring a market failure. Such an action would be premature and counterproductive.

In addition to leveraging organizations with existing connections to low-income communities, successfully serving low-income communities with CDG will require addressing project economics and customer credit quality or risk. NYSERDA has already begun working with market participants to address financial challenges, and the New York Green Bank has expressed a desire to help as well. Those efforts should not be cut short prematurely. Directing solutions to the province of the regulated utilities could chill the efforts of market participants to serve this customer segment.

The incumbent utilities in New York enjoy low cost of capital, low risk, and direct access to customer data. These advantages may support serving low-income customers, but using utilities as a vehicle to accomplish a societal objective such as providing low income customers with access to solar energy is premature and not clearly aligned with REV at this time. If targeted mechanisms to address the specific economic and financing risks associated with serving low income customers

⁶ Community Owned Shared Renewables Group of the Energy Democracy Alliance, New York Community Solar Case Studies (Dec. 2016), available at <http://energydemocracyny.org/wp-content/uploads/2017/01/CoShare-CSS-case-studies.pdf>.

⁷ Id.

are made available to other market participants and equal access to customer data enabled, New York will see a robust and innovative marketplace for CDG serving this customer segment. It is important to encourage participation and innovation in the market by a broad number of stakeholders - including those who have experience serving low-income customers.

Moreover, low-income communities desire more control over the energy they use, including how it is generated. Many low-income communities have been left behind in the build-out of the current energy system. Paramount to overcoming inequities are community outreach, engagement, and involvement in decision making. Additionally, many low-income communities desire greater and more meaningful participation in the energy economy, including an ownership interest in the energy generating systems that serve them. These principles of energy democracy support efforts to break down barriers to market participation. As the Staff and Commission consider ways to increase access to CDG projects, finding ways to break down barriers to market participation should be a top priority.

c. Consumer Protection

The CDG Stakeholders are pleased that the consumer protection issues, such as the development of a standardized customer disclosure statement, constitute an important part of Staff's solicitation. With solar adoption on the rise, it is important to ensure that customers are well-informed about their options and that any individual bad market actor is prevented from ruining solar development for the majority of installers. Consumer protection is one of the five guiding principles outlined in the *Low-Income Solar Policy Guide* that was developed by GRID Alternatives, Vote Solar, and the Center for Social Inclusion,⁸ and we believe that it should be a guiding principle in crafting low-income solar programs.

At the outset, it is important to emphasize that affordable distributed solar is helping families, schools and businesses in New York and across the country take charge of their power supply and their electricity bills like never before, which itself is a significant form of consumer protection. Distributed solar is allowing more and more customers to choose the amount of energy to they wish to purchase from the grid, and the amount they wish to produce and consume with clean energy systems located on their properties or in their communities. Along with that customer

⁸ Center for Social Inclusion, GRID Alternatives, Vote Solar, *Low-Income Solar Policy Guide* (2016), available at www.lowincomesolar.org.

choice comes greater control over electricity bills and the ability to contribute to broader social benefits like clean air, better public health and good local jobs. As solar costs continue to decrease and as long as solar customers continue to be compensated fairly for the excess clean energy they generate, more ratepayers will have the choice to be powered by the sun.

Fortunately, the solar industry is leading the way to promote the principles to protect customers in the growing clean energy economy. In 2015, the Solar Energy Industries Association (“SEIA”) launched a suite of tools to promote consumer protection throughout the solar industry, including its *Solar Business Code*, model contracts and disclosure forms, and consumer guides.⁹ SEIA took guidance from the Federal Trade Commission and the Federal Communications Commission, as well as with states and consumer advocates, to craft its materials. As a result, the Better Business Bureau has praised SEIA’s efforts to provide transparency and accountability in the solar marketplace.¹⁰ The SEIA Solar Business Code provides rules on advertising, marketing, and contracts, and SEIA also has developed enforcement measures to ensure that its Solar Business Code has “teeth.”¹¹ Additionally, in 2016 SEIA and the Coalition for Community Solar Access partnered to develop a *Residential Consumer Guide to Community Solar*.¹² This guide provides consumers with an overview of community solar, advice on how to become well informed, questions solar customers should ask before entering into an agreement, and links to other resources. To help consumers better understand and compare offers, SEIA released disclosure forms which give consumers a snapshot of key terms in an agreement. Finally, SEIA is working on templates for state addendums for its consumer guides in order to provide consumers with state-specific information. The Staff and Commission can look to the solar industry as a starting point for protecting CDG customers.

⁹ SEIA Consumer Protection: Customer Resources, *available at*: <http://www.seia.org/consumer-protection-customer-resources>

¹⁰ SEIA Further Simplifies Residential Solar for Consumers, June 20, 2016, *available at*: <http://www.seia.org/news/seia-further-simplifies-residential-solar-consumers>

¹¹ Process for Addressing Consumer Protection Complaints Arising Under SEIA Solar Business Code (2016), *available at* <http://www.seia.org/sites/default/files/SEIA%20SBC%20Complaint%20Resolution%20Process%20v%201.1%20-%20Jan%202016.pdf>

¹² SEIA, CCSA Residential Guide to Community Solar, July 2016. *See*: <http://www.seia.org/sites/default/files/Residential%20Consumer%20Guide%20to%20Community%20Solar%20-%20FINAL.pdf>

1. Development of a Standardized Customer Disclosure Statement – Attachment A

The CDG Stakeholders look forward to continued work with the Staff to formulate a draft of a concise disclosure statement that would be delivered to all residential customers upon enrollment with a CDG provider. In general, we believe a disclosure statement is a good way to ensure that customers are well-informed about the CDG agreements into which they enter. The Customer Disclosure Statement could be used as a “checklist” to ensure that CDG providers cover each element with customers. However, we urge some caution. While much of the Customer Disclosure Statement is consistent with SEIA’s lease and PPA disclosure forms, a few general concerns include, but are not limited to:

- The number of disclosures and attached documents should not be so large and numerous that customers will not read them.
- The form should not be a one-size fits all form. In other words, the form should not require a disclosure that does not fit a particular business model.
- The disclosure form may need to be finalized after VDER and other rules are adopted as final, because some disclosures concerning RECs, compensation, etc. will be difficult to address without understanding the final rules.
- The Staff must continue to work with stakeholders and gather input so that the Customer Disclosure Statement can be continually refined as needed.

With those cautions in mind, the CDG Stakeholders recommend some revisions to the draft Customer Disclosure Statement at this time, recognizing that this is not our final recommendation. For ease of use, we have marked-up the Staff proposed Customer Disclosure Statement below in legislative style. Of note, this Customer Disclosure Statement contains some elements that appear to be particular to CDG projects. Some of the elements may not be applicable to solar projects that are not CDG projects. Accordingly, this Customer Disclosure Statement may not be appropriate for use by both “Community DG project sponsors and other solar providers” as the Staff seems to contemplate in its Solicitation.¹³ The CDG Stakeholders strongly recommend striking the 60-day cancellation provision from this disclosure statement. The CDG Stakeholder are not aware of a rule requiring this business practice. It is not appropriate to include this business practice

¹³ Case No. 15-E-0082, Solicitation at 1 (Dec 5, 2016).

requirement in a disclosure statement without going through the appropriate steps, such as a rulemaking.

CUSTOMER DISCLOSURE STATEMENT

Costs of Subscription	<ul style="list-style-type: none"> ï Non-recurring charges ï <u>Late payment fees, if applicable</u> ï Recurring charges
Terms and Conditions of Subscription	<ul style="list-style-type: none"> ï Financial structure (PPA, lease or ownership) ï <u>Confirm that rights to applicable tax credits and renewable energy certificates (RECs) have been explained</u> ï <u>Confirm that bill crediting/value has been explained</u> ï Rollover credit banking process (if applicable) ï Notice when project is out of service, estimated time of restoration, and loss of production ï Maintenance plan ï Copy of solar panel warranty
Length of the Agreement, End Date, and Renewal	<ul style="list-style-type: none"> ï Term of subscription and process for contract renewal ï Process to unsubscribe ï Low income subscribers may exit contract without penalty with 60 days' notice to sponsor. **
Data Sharing and Privacy Policy	<ul style="list-style-type: none"> ï <u>Confirm that customer has been provided with an</u> explanation of how Project Sponsor and Utility will share Subscriber's data ï <u>Confirm that customer has been provided with</u> data privacy policies
Project Performance	<ul style="list-style-type: none"> ï Definition of underperformance and compensation to be paid by Developer ï <u>Explanation of how notice will be provided when project is out of service, estimated time of restoration, and loss of production</u> ï <u>Information on how customer can obtain maintenance plan</u> ï <u>Information on how customer can obtain copy of solar panel warranty</u>
Capacity Allocation/Subscription Size	<ul style="list-style-type: none"> ï How credits will be allocated to subscriber ï Percentage of output to be credited to subscriber
Guaranteed Savings	<ul style="list-style-type: none"> ï This agreement offers no guaranteed savings. <u>Statement whether provider guarantees savings</u> ï <u>Statement whether provider guarantees CDG project production</u>
Rescinding Agreement Without Penalty	A residential customer may rescind this agreement without penalty by calling the toll-free number within 3 business days of receipt of the sales agreement.
Amount of Early Termination Fee ("ETF") and Method of Calculation	<ul style="list-style-type: none"> ï Amount of Early Termination Fee, if any ï Method of calculation of ETF

2. Application of Certain Home Energy Fair Practices Act ("HEFPA") Provisions

The CDG Stakeholders appreciate initial efforts to identify provisions of HEFPA that could apply to CDG project sponsors. However, it is not clear to the CDG Stakeholders how HEFPA applies to CDG providers. HEFPA clearly applies to distribution utilities, mandating procedures and timelines for distribution utility specific functions like meter reading and customer billing

based on usage. It is not clear that HEFPA should apply to CDG providers given that CDG providers likely will not be providing covered functions of the distribution utilities. We encourage the Staff to continue to work with stakeholders as it thinks through these issues and develops the White Paper.

Conclusion

The CDG Stakeholders are grateful to the Commission for the opportunity to provide comments in response to Staff's Solicitation. We remain committed to finding solutions to ensure access to renewable energy for low-income customers, and appreciate the Commission's ongoing efforts on this front.