

April 10, 2015

VIA EMAIL

Audrey Zibelman
Chair, Public Service Commission
Three Empire State Plaza, 20th Floor
Albany, New York 12223-1350

Re: Case 14-M-0101 – Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision: Energy Efficiency Provisions in the Track One Order

Dear Chair Zibelman:

The undersigned organizations submit this letter of concern in regard to the treatment of energy efficiency under the New York Public Service Commission’s (“PSC”) Reforming the Energy Vision (“REV”) Track One Order (“REV Order”).¹ Our organizations – selected members of the Clean Energy Organizations Collaborative (“CEOC”), a group of aligned stakeholders participating in the REV case, and the Advanced Energy Economy Institute – support the overall goals of REV and are pleased the REV Order acknowledges that “increased penetration of energy efficiency measures must play an important role in achieving the State’s carbon reduction goals” and that it emphasizes market transformation as a driving force in future energy efficiency efforts.²

At the same time, we urge the Commission to provide further guidance about the responsibilities of utilities and NYSERDA or risk backsliding from the tremendous progress made to date on energy efficiency in New York.

We recognize that the PSC through the REV Order has launched a series of new processes to work through the details of energy efficiency program implementation in New York, but we seek more detail from the Commission on the matters raised in this letter. Certainly further clarity on the issues raised here will help New York achieve the goals we share – to help develop robust sector-wide energy efficiency savings – and to help meet Governor Andrew Cuomo’s goal of reducing climate pollution by 80% by the year 2050.³

In this document we address: 1) the nature of our organizations’ involvement in the REV case and their experience with energy efficiency efforts in other states, 2) the REV Order’s

¹ Case 14-M-0101, Proceeding on the Motion of the Commission in Regard to Reforming the Energy Vision, Track 1 Order Adopting Regulatory Policy Framework and Implementation Plan [Hereinafter “Track One Order”].

² *Id.*

³ N.Y. STATE ENERGY PLANNING BD., 2014 Draft State Energy Plan Impacts & Considerations vol. II, at 8 (2014), <http://energyplan.ny.gov/Plans/2014.aspx> (last visited Mar. 30, 2015) [Hereinafter “Draft State Energy Plan”].

treatment of energy efficiency, 3) our detailed concerns about certain key provisions, 4) suggestions for additional PSC guidance that would help parties as Department of Public Service Staff (“Staff”) prepare forthcoming energy efficiency documents for notice and comment, and 5) concluding observations.

1) About the CEOC

The Pace Energy and Climate Center (“Pace”) and the Alliance for Clean Energy New York (“ACENY”) co-convene an independent group called the CEOC on the REV and Clean Energy Fund proceedings. The collaborative is made up of national and state-based environmental organizations, clean energy companies and organizations, renewable energy industry trade associations, consumer groups, energy efficiency providers, and academic centers. The undersigned CEOC members and the Advanced Energy Economy Institute submit these concerns about the provisions of the REV Order.

All signatories to the letter have been active parties in the REV Case and have paid special attention to the issues related to energy efficiency. Several of the undersigned organizations and their members have significant experience designing or implementing energy efficiency programs in New York and other states and have participated in public utility commission cases on energy efficiency matters across the Northeast.

2) REV Order Energy Efficiency Actions

On August 22, 2014, the PSC issued its Track One Straw Proposal for comment.⁴ The Track One Straw Proposal recognized that increased penetration of energy efficiency measures is needed to accomplish New York’s carbon reduction goals.⁵ The Straw Proposal also recognized that investment in these programs must come from both ratepayers and private investors.⁶ In response to the Straw Proposal, many members of the CEOC, including Pace and ACENY, advocated for a stronger emphasis on energy efficiency because it is a direct and system-wide tool for impacting base load and effecting the changes sought through REV, including increased customer engagement and ensuring energy affordability, especially for low income consumers.

On February 26, 2015, the PSC issued the REV Order following comments from the parties. The REV Order recognizes the currently limited market for competitive energy efficiency offerings.⁷ In the absence of a mature market, the REV Order concludes that utilities must continue to provide energy efficiency measures, but with offerings made under a new framework aimed at incenting innovation and transitioning to market-based programs.⁸ The REV Order also established one-year energy savings budgets for investor owned utilities for 2016 and stated that budgets post-2016 must be sufficient to meet existing targets and programs to support a market transition.

⁴ Case 14-M-0101, Proceeding on the Motion of the Commission in Regard to Reforming the Energy Vision, Track 1 Straw Proposal.

⁵ *Id.*

⁶ *Id.*

⁷ Track One Order, *supra* note 1 at 72.

⁸ *Id.*

The REV Order establishes several provisions directing the process and implementation of REV energy efficiency planning, including items such as specifying the elements that should be included in utility Energy Efficiency Transition Implementation Plans (“ETIPs”) and creating a new “self-direct” effort that would allow certain customers the ability to use funds that they would have paid in ratepayer surcharges to improve energy efficiency in their own facilities.⁹

3. REV Order Concerns

Energy efficiency is a critical component of the energy vision for New York State. The first initiative of Governor Cuomo’s Draft State Energy Plan is to “realign energy efficiency policies to work with and through markets in order to accelerate the pace of energy efficiency deployment.”¹⁰ The Draft State Energy Plan also states that unless there is a change in approach to “provide greater emphasis on energy efficiency and clean localized power sources, it is estimated that over the next 10 years more than \$30 billion will need to be invested ... to replace aging infrastructure and central generation resources just to meet currently projected demand.”¹¹ The Draft State Energy Plan also points out “state-wide utilization of existing electric infrastructure averages just under 60 percent,” and that “[s]trategies focused on system efficiency will increase the utilization factor, enabling ... more benefit from assets currently installed.”¹² Energy efficiency has a major role to play in system utilization, energy affordability, and in the reduction of carbon emissions.

The benefits of energy efficiency in meeting the stated goals of REV extend beyond even system efficiency: energy efficiency is, in fact, a reliable, measureable and verifiable energy *resource*. Ratepayer contributions to the purchase of that resource are a means of meeting both residential and commercial consumer energy need. To simply focus on ratepayer contributions as an added *cost* diminishes the valuable role that energy efficiency has and continues to play in our statewide energy system planning and delivery. Energy efficiency within REV must truly be considered a *resource* and not simply a *program cost*.

To further illustrate these points, we list our key concerns below.

3.1. Market Transformation and Energy Efficiency

The REV Order describes the current energy efficiency program model as creating a barrier to the market, or otherwise inhibiting beneficial free market forces. Such a depiction of current surcharge/rebate programs distorts the history of energy efficiency. Energy efficiency programs have almost universally sought to overcome market barriers and almost always are designed to wind down market interventions when markets become self-sustaining. In fact, in the period since the inception of energy efficiency programs in New York, we can point to a host of products and technologies for which incentives are no longer offered because the markets for those products have been effectively transformed. These range from household refrigerators to industrial motors and include new state or federal efficiency standards or changes in building energy codes. In nearly all of these cases, the transformation of the markets would not have

⁹ *Id.*

¹⁰ Draft State Energy Plan, *supra* note 3 at 12.

¹¹ *Id.*

¹² *Id.* at 29.

occurred absent the intervention of energy efficiency programs derived from public policy choices and regulatory oversight. However, evidence across the country suggests that, absent a variety of public interventions, such a self-sustaining market for *all* energy efficiency products and services has yet to emerge, and so continuing financial incentives that leverage private capital for certain products and services is itself a market transformation program that leverages private capital as well.

Energy efficiency has a unique set of market barriers compared to other types of distributed energy resources. Energy efficiency market barriers include split incentives, capital investment billing cycles, insufficient product knowledge among retailers and market channel actors, competition for limited consumer dollars, and implicit hurdle rates for adoption, all of which must be factored into energy efficiency program planning. These factors contributed to the initial barriers that guided Energy Efficiency Portfolio Standard (“EEPS”) program market design toward interventions sufficient enough to mobilize the purchase of energy efficiency. While there is certainly merit to the conclusion that subsidy-driven investment in energy efficiency is not the optimal long-term solution, nor the only solution, it is important that the PSC recognize the original and ongoing market barriers that led to the implementation of incentive and technical support programs in the first place. The need for such programs continues to exist until the promise of REV markets becomes a reality.

3.2. *Multi-year Budgets and Target Timelines*

The REV Order requires that “current 2015 efficiency targets represent a minimum” for energy efficiency going forward.¹³ The REV Order establishes only a one-year budget and savings target for energy efficiency, then assigns responsibility for planning the remaining years in the three-year cycle to separate companion filings.¹⁴ The companion filings – the ETIPs – will utilize the 2016 budgets and targets and the budgets proposed by utilities for 2017 and 2018.¹⁵

The sunset of EEPS leaves a void in energy efficiency programs in New York, which comes at an inopportune moment in the transition to the market-based REV. While assigning a one-year budget is better than simply trusting in the utilities’ ability to reach vague goals, the PSC should give greater guidance for years two and three, and beyond. Utilities will be asked to submit and implement their ETIPs amidst the uncertainty of restructuring to become distributed system platform providers (DSP), implementing advanced metering infrastructure (AMI), courting distributed energy providers, and responding to any new or unforeseen PSC directives coming out of Track 2.¹⁶

The PSC should provide clarity about the minimum energy efficiency reductions (floor reductions) for the additional two years of the first three year cycle to preserve energy efficiency gains and increase, or at least stabilize energy efficiency efforts amidst the other moving parts of REV. Utilities, third-party energy efficiency companies, and consumers would benefit from target and budget clarity when determining program details through upcoming rate cases. This

¹³ Track One Order, *supra* note 1 at 75.

¹⁴ *Id.*, at Appendix C.

¹⁵ *Id.*

¹⁶ Track One Order, *supra* note 1 at 131.

clarity is essential for businesses seeking to mobilize and deploy capital, hire staff, and develop supply chains. Furthermore, the REV Order “floor” set for utilities risks becoming an artificial and arbitrary ceiling for efficiency efforts; the Commission needs to clarify that utilities must pursue additional efficiency when it is the least cost resource.

3.3 *The Effectiveness of Energy Efficiency Targets*

Work by ACEEE and others show that states that set hard energy savings targets do a better job of obtaining energy savings.¹⁷ ACEEE found that states with energy efficiency resource policies with specific targets are much more effective in driving cost-effective energy savings than those that rely largely on the market.¹⁸ Specifically, ACEEE found that setting challenging targets leads to greater capture of all cost-effective efficiency available.¹⁹ In the same study, ACEEE found that states with the highest targets had program administrators “investigating ways of reaching new customer bases and transforming markets upstream” while states with loosely managed industrial self-direct and opt-out policies” were constrained in their effectiveness.²⁰

In the face of this evidence supporting the effectiveness of hard energy savings targets, we believe the Commission should revisit requiring multi-year hard targets for New York utilities. Hard targets are not incompatible with market-based programs. They merely serve as a driver for energy efficiency deployment but do not define a specific approach.

3.4 *The Role of NYSERDA*

Since the start of EEPS, NYSERDA efforts have accounted for more than 4.1 million MWh of acquired or committed energy savings.²¹ In total, these initiatives have delivered nearly twice as much savings as all the utility programs combined – about 62 percent of the total amount of energy saved.²² This significant role cannot be easily dismissed, particularly when compared to utility energy efficiency transition budgets that aim for 548,687 MWhs of energy savings in 2016. The fate of approximately 1.2 million MWhs of energy savings that would have been acquired by NYSERDA next year remains uncertain. So while we recognize and appreciate that a goal of REV is to amplify and increase these savings over time, our concern lies with the achievement of these minimum (or floor) savings (i.e. 1.2 million MWhs) during the transition period.

Further, because we fully support the elimination of competition for energy savings between the NYSERDA and utility programs, our assumption had been that the utilities would be directed to take on a leadership role in providing resource acquisition programs in the transition period, guided by ambitious targets and metrics that included NYSERDA’s share. The

¹⁷ Case 14-M-0101, *Proceeding on the Motion of the Commission in Regard to Reforming the Energy Vision, Comments from the American Council for Energy Efficient Economy (ACEEE) on the DPS Staff Straw Proposal on Track One Issues.*

¹⁸ Annie Downs and Celia Cui, *Energy Efficiency Resource Standards: A New Progress Report on State Experiences* (Apr. 2014)

¹⁹ *Id.* at 25.

²⁰ *Id.* at 16.

²¹ Pace Energy and Climate Center, *Charting the Course for Energy Efficiency in New York: Lessons from Existing Programs* (forthcoming report, April 2015).

²² *Id.*

Commission should now clarify how NYSERDA's share of expected energy savings will be guaranteed – through working in concert with and in support of utility efforts rather than in competition.

3.5. *Concerns Over the Role of Rebates*

The REV Order states “that the place for rebate programs is limited in a market transformation strategy...[and rebates] may service to inhibit rather than encourage market development.”²³ The REV Order then concludes that a fully market-based system is superior and there is no place for rebates.²⁴

However, this approach ignores evidence that effective programs combine resource acquisition, financing, and market transformation efforts to get the best outcomes, as argued by both Chris Kramer from Energy Future Group and ACEEE.²⁵ Currently, the REV Order is vague in its consideration of how entities should implement a combined approach to program management. The Commission should modify the guidance on energy efficiency programs under REV in order to better capture the benefits of combination strategies.

The REV Order states that rebate programs can have the “unintended effect of displacing markets and inhibiting market transformation.” The Order states that “[w]here a program ...subsidizes well-established technologies and practices...market activity outside of the program is at a disadvantage.”²⁶ The Order also states that subsidy programs have a “further effect of denying efficiency program funds to new technologies that are more in need of development.”²⁷ Based on these potential issues the Order concludes that the direct rebate approach should be replaced with a “successful market transformation program.”²⁸

However, these concerns lack sufficient factual support and inadequately address the relative maturity of sub-class market segments. The Order also fails to identify evidence of success in markets without the intervention of publicly-directed and overseen programs. New York may look to its neighbors in Connecticut as an example of a new effort to encourage private financing of energy efficiency via its version of a Green Bank.²⁹ While the CT Green Bank can point to dozens of new investment outcomes, none have come to pass without the initiation and significant involvement of the Energize CT energy efficiency programs, which are funded in large part, by ratepayer investments, and planned, reviewed, evaluated and regulated by the state's Department of Energy and Environmental Affairs.

²³ Track One Order, *supra* note 1 at 77-78.

²⁴ *Id.*

²⁵ Chris Kramer, ENERGY FUTURES GROUP, *ACEEE Summer Study on Energy Efficiency in Buildings. Residential Financing on the Ground: Lessons Learned from Programmatic Examples* (2014), at 6-175.

²⁶ Track One Order, *supra* note 1 at 76

²⁷ *Id.*

²⁸ *Id.*

²⁹ Connecticut Green Bank – CLEAN ENERGY FINANCE AND INVESTMENT AUTHORITY, *available at* <http://www.ctcleanenergy.com>.

In addition, the REV Order states the end goal of market transformation programs is to “eliminate the need for further subsidies.”³⁰ The goal of market transformation from the outset should be to mobilize capital to create the greatest opportunity for market penetration of energy efficiency. The ability to eliminate subsidies is a benefit of successful market transformation but assigning primacy to eliminating subsidies ignores experience in other states in setting energy efficiency goals and threatens to disrupt the market transformation process.

The REV Order repeatedly states the undisputed importance of transforming energy efficiency markets. More clarity is needed on how current energy efficiency investment opportunities will be identified, what responsibility utility platform providers will bear in capturing those opportunities, and who will develop the incentives and penalties imposed on platform providers to provide real consequences for succeeding or failing to motivate energy efficiency savings.

The PSC has an opportunity to provide more clarity in the ETIP guidance filing, and should seize the chance to require robust proposals for the planning, implementation, and dramatic increases in energy efficiency performance. The ETIP guidance will inform not only utilities’ energy efficiency transition plans but likely will serve as a blueprint for the further deployment of energy efficiency through rate cases and motivation for third-party providers.

3.6. Clarity in the Self-Direct Program

The Commission should further clarify provisions related to the self-direct program. While self-direct programs have been tried in a number of jurisdictions around the country, they have not always been successful. We see several issues with a self-direct program described in the REV Order. First, it is unclear from the Order how the self-direct program would determine and procure funding. The concept of “self-direct” is that large energy customers have the ability to direct the fees that they would otherwise pay for utility or state administrated energy efficiency programs.³¹ A stated intent of REV is to move towards gradual elimination of the surcharge cost recovery mechanism.³² In order to implement a self-direct program, there must be a fee that the customer could avoid and redirect towards individual projects. This program implies the creation of a surcharge, which is directly contradictory to the REV Order’s preference for funding efficiency programs through “rates like the other components of the revenue requirement.”³³ There may be another arrangement possible within rate structures, but the REV Order does not describe such a tool. Instead, the self-direct program as described leaves an outstanding question regarding funding structures under REV. The PSC needs to clarify the mechanism to fund self-direct, that is, whether there are credits, a surcharge, or some other tool aimed at providing the customers with the ability to spend on energy efficiency and to explain how that will impact implementation of rate making under REV.

³⁰ Track One Order, supra note 1 at 77.

³¹ *Id.*

³² *Id.*

³³ *Id.* at 79.

Second, the overall efficacy of the utility driven targets may be contingent on the participation of large industrial and commercial customers.³⁴ Allowing large customers to opt-out of utility programs could result in more challenging or expensive project administration for other customers. The amount of detail provided in the REV Order does not provide a clear picture how the PSC envisions harmonizing the self-direct program with other aspects of REV.

Third, the REV Order and Appendix C do not provide sufficient detail to clarify even the formulation of guidance as part of the implementation plan. There are several self-direct energy efficiency programs in the country, and careful program design, including rigorous evaluation, measurement and verification (EM&V) is essential to their function. It is unclear whether REV intends to rely on a best practices framework, or if a self-direct best practices framework is compatible with the overarching structure of REV.³⁵ The PSC should provide clarification on the structure of the self-direct program, clearly define its threshold for participation, and utilize the ACEEE best practices framework when developing further guidance on the self-direct program.

In addition to the lack of clarity on where and how the self-directed funds enter the equation, there is also ambiguity on how the customer's installations will affect the utilities' targets. Large commercial and industrial customers participating in the self-direct program must be required to have EM&V such that these programs can then be relied upon to be included in state and utility savings assessments and future system planning. In several jurisdictions around the country where self-direct programs have been offered, including Massachusetts and Vermont, what was anticipated to be a rush among large customers to run their own programs proved to be less so once those customers understood the rigors of EM&V required to ensure reliability in state planning and assessment of overall energy savings.

4) Upcoming Filings

We request that the PSC clarify the aforementioned issues raised in this document. We also recognize that the REV Order lays out several forthcoming filings, which could be purposed to provide program specifics and design clarity to ease the transition. The ETIP guidance is the first of the series of energy efficiency transition, which we hope will address our concerns.

For example, ETIP guidance should set a floor for on-going targets for the first three years and not yet replace targets with utility-driven performance metrics.

³⁴ Annie Downs and Celia Cui, *Energy Efficiency Resource Standards: A New Progress Report on State Experiences* (Apr. 2014)

³⁵ ACEEE, *Self-Direct Programs for Large Energy Users – Best Practices*, available at <http://aceee.org/sector/state-policy/toolkit/industrial-self-direct>. Best practices for self-direct programs generally include: develop a program structure that allows facility managers to treat their energy efficiency fee payments as dedicated funds for energy efficiency, either through dedicated escrow accounts, rebates earned only upon project completion, or rate credits earned concurrently with measurable energy efficiency investments and/or savings; a mechanism to recoup paid funds from self-direct customers if it is determined that savings were claimed erroneously or if planned savings did not actually occur; collect and establish self-direct customers' baseline energy use data; focus on energy savings rather than funds expended towards energy efficiency; measure and verify all claimed savings; retain a portion of a customer's energy efficiency fees to ensure self-direct customers contribute to funding a program's administrative costs; generally do not allow credit for investments made prior to the commencement of the program.

The guidance should also include: 1) using grid-focused integrated resource planning to identify where energy efficiency offers the lowest-cost pathways to meeting system service goals; 2) a goal development and review process that can be adopted by each utility and NYSERDA to guide their program planning; and 3) broad outlines of appropriate energy efficiency performance metrics. These points are referenced by REV as potential motivating forces for accelerating energy efficiency deployment, and should be included in additional guidance - whether in a supplemental Order or as an emphasis in the Track 2 proceeding.

Staff plans to release the ETIP guidance on May 1st, 2015. We believe this is an excellent opportunity to turn concern into progress, and to create a more clearly defined process for energy efficiency in REV.

5) Summary and Conclusion

We thank you for your consideration of these issues. To recap:

- We support the Commission's position in the REV Order that market transformation should be a driving force in future energy efficiency efforts.
- While incentives are not the ultimate long-term solution, the PSC should recognize the ongoing market barriers that still need to be overcome and are the reason for the incentives in the first place.
- The PSC should give more guidance on budgets and the expected floor for energy efficiency for 2017 and 2018 to make sure energy efficiency is at least stable during the transition.
- The PSC should clarify that the floor is also a ceiling and that the utilities should pursue energy efficiency when it is a least cost resource.
- The PSC should take care to safeguard the significant energy efficiency savings provided by NYSERDA programs as it moves forward without recreating competition between utility and NYSERDA programs.
- The PSC should reconsider its approach and capture the benefits of combination strategies that include a mix of rebates, financing, and market transformation. Evidence shows that they are the most effective programs.
- The PSC should use the ETIPs to provide utilities with guidance on how energy efficiency investments will be identified, what responsibility the utilities will have in capturing those opportunities, and what incentives and penalties imposed on platform providers.
- The PSC should clarify the self-direct program and examine ACEEE best-practices when developing further guidance.

We thank you for your consideration of these issues. We look forward to continuing to work with you and your staff toward the goal of aggressively increasing energy efficiency savings in New York and meeting Governor Andrew Cuomo's goal of reducing climate pollution by 80 percent by the year 2050. We look forward to an opportunity to meet in person to discuss these items in detail.

We will follow up shortly to schedule a discussion.

Respectfully submitted,

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