

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

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

Case 14-M-0101

**Association for Energy Affordability, Center for Working Families, Green and Healthy
Homes Initiative, Natural Resources Defense Council, and Pace Energy and Climate
Center Filing Jointly as “Energy Efficiency for All”**

**Initial Comments on the Staff White Paper on Ratemaking
and Utility Business Models**

October 26, 2015

Introductory Comments

The following members of Energy Efficiency for All¹ (“EE for All”), Association for Energy Affordability, Center for Working Families, Green and Healthy Homes Initiative, Natural Resources Defense Council, and Pace Energy and Climate Center, respectfully submit these comments on the Department of Public Service Staff (“DPS Staff” or “Staff”) White Paper on Ratemaking and Utility Business Models (“White Paper”), filed on July 28, 2015.²

EE for All is a coalition that advocates for energy efficiency and complimentary renewables in affordable multifamily housing (and including low income, green workforce, and environmental justice concerns) and a just and inclusive clean energy transition for all New Yorkers. EE for All has been an active participant in the Reforming the Energy Vision (“REV”) proceeding and related proceedings, submitting comments on the REV Track One White Paper, the Clean Energy Fund (“CEF”) Reallocation Supplement and Information Supplement, the Green Bank Capitalization Petition, and in the Low Income Proceeding.

EE for All believes that all New Yorkers should share in the environmental, financial, and health benefits that REV can provide. REV cannot be considered a success if it leaves historically disadvantaged environmental justice and low-income communities behind. These comments will focus on aspects of the White Paper that may affect low-income and environmental justice communities. Specifically, we will address: (1) the need for shorter-term rate periods; (2) the importance of modifying the current net plant reconciliation (“clawback”) mechanism; (3) the importance of establishing more aggressive utility energy efficiency targets; (4) establishing Earnings Impact Mechanisms (“EIMs”) and scorecard metrics that recognize the

¹ Energy Efficiency for All is a coalition that advocates for energy efficiency and complementary renewables in

² Case 14-M-0101, Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision, Developing the REV Market in New York: Staff White Paper on Ratemaking and Utility business Models, issued July 28, 2015.

needs of low-income and environmental justice communities; (5) the need to reject utility fixed charge increases; and (6) ways to capture the full value of distributed energy resources (“DER”).

1. The Rate Plan Period Should Be Limited To Three Years.

EE for All recommends that the Commission limit rate plan periods to three years. In the initial cycles there will be too many fundamental changes to ratemaking and revenue recovery to allow for four or five years before the next rate case. Waiting four or five years between rate periods will place too much risk on low and moderate income customers. Long periods between plans do not provide adequate protections that all customers will be adequately served, or protection against the utility recovering too much revenue from them.

We appreciate Staff’s recommendation that extensions to rate plan periods should only be allowed if a utility is able to (i) achieve satisfactory price and earning levels; (ii) adhere to capital plans; and (iii) achieve certain gateway measures (such as the development of platform capabilities, a successful interconnection record, DER penetration and system efficiency improvements).³ However, these safeguards are not sufficient to offset the risks to customers associated with longer rate plans. The Commission should investigate utility performance, customer impacts and market development every three years.

EE for All is also concerned that allowing utilities to decide, during a rate plan period, whether to extend that period would enable the utility to choose the option which best suits their financial interest. Under this construction, the Commission and stakeholders would not be in as good a position as the utility to determine whether an extension was in the customers’ best interest.

³ Ibid, at 71.

Importantly, shorter-term rate plan periods will place a burden on stakeholders in terms of their ability to participate in rate cases. An intervenor mechanism should be developed to ensure all interested parties are capable of participating in a meaningful way.

Furthermore, we recommend that each utility should implement a distribution system implementation plan (“DSIP”) prior to conducting a rate case. EE for All recommends that utility DSIPs should be revisited every three years to ensure that they represent the latest information regarding DER technologies, costs and opportunities; customer response to the new rate designs; and third party and market developments. After each utility completes a DSIP, it should open a rate case to account for the new DSIP results in setting revenue requirements and addressing other ratemaking decisions. Consequently, allowing the utility to choose when the next rate plan should take place could offset this important connection between DSIPs and rate cases, or could prolong the period between DSIPs more than is appropriate.

2. Modify The Net Plant Reconciliation Mechanism.

EE for All supports Staff’s proposal to modify the existing net plant reconciliation (“clawback”) mechanism, with some modifications. A reformulated clawback can reduce the incentive created by the existing net plant reconciliation mechanism for utilities to favor capital projects over third-party DER and operating resource investments.

However, we recommend a modification to the Staff’s proposal, where a utility would be able to retain a portion of the savings until the next rate case. Under Staff’s proposal, utilities would retain 100% of the unspent return and carrying charges on capital projects that could be supplanted or obviated by DER. This formulation, as is the case with the existing clawback mechanism, could encourage utilities to inflate their capital investment budgets in order to

increase their returns, which is ultimately harmful to ratepayers, including low-income customers.

Based on the foregoing, EE for All recommends modifying the clawback mechanism such that the return and carrying charges on capital projects supplanted by DER are split twenty-eighty between the utility and its customers, respectively—in other words, the utility would retain 20% of the savings and return the remaining 80% to ratepayers. Such an earnings sharing mechanism would at least partly protect ratepayers from over-inflated capital expenditure projections, and would provide utilities with a stronger incentive to choose third-party DER providers over capital projects.

Ultimately, in line with the objectives of REV, the modified clawback is intended to encourage utilities to deploy distributed energy resources and supplant resource-heavy capital projects. An earnings sharing mechanism would provide the greatest protection to ratepayers and would simultaneously move utilities away from focusing on capital investments at the expense of DER.

3. Set Aggressive Energy Efficiency Targets for Utilities.

As DPS Staff notes in the White Paper, maintaining minimum energy efficiency targets is essential to ensuring that savings achieved under existing programs are not lost.⁴ We wholeheartedly agree that New York should not backslide on its commitment to energy efficiency. The Commission should reject any proposed reductions of the efficiency targets and budgets set by the Commission in the Track One Order.⁵

⁴ Supra note 2 at TK.

⁵ Case 14-M-0101, Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision, New York Public Service Commission Order Adopting Regulatory Policy Framework and Implementation Plan, February 26, 2015, Appendix C.

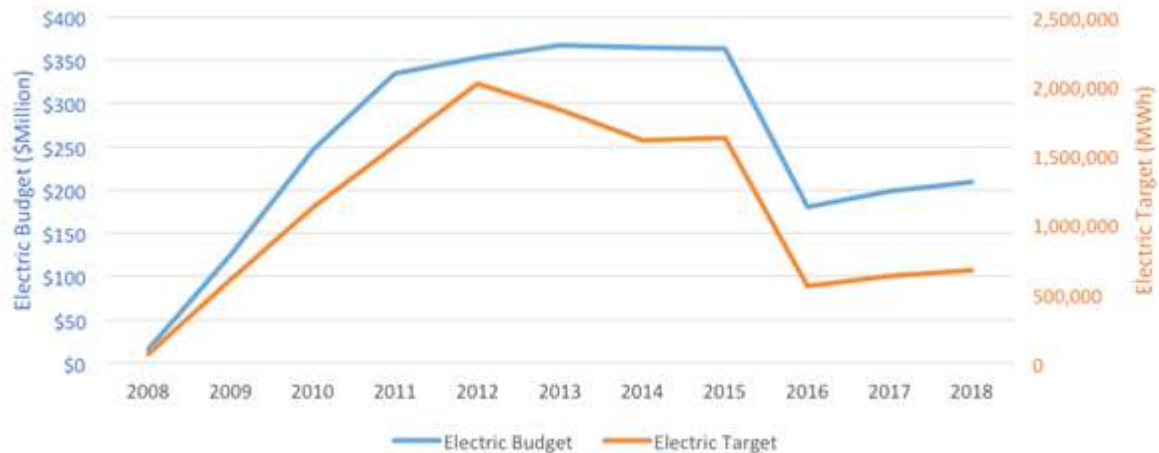
In our comments on the utility Energy Efficiency Transition Implementation Plans (“ETIPs”) and Budgets and Metrics Plans (“BMPs”),⁶ we called on the Commission to set more aggressive energy efficiency targets. Targets will continue to play an important role in driving energy efficiency investment as the Commission implements an effective transition from the current Energy Efficiency Portfolio Standards (“EEPS”) program to the REV market-based model.

Furthermore, the utilities’ ETIP and BMP filings must be viewed alongside the New York State Research and Development Authority’s (“NYSERDA”) proposed energy efficiency programs under its CEF program. Taken together, the utilities’ efficiency targets and budgets and NYSEDA’s programs represent the roadmap to achieving New York’s ambitious State Energy Plan (“SEP”) goal of increasing statewide energy efficiency by 600 trillion BTUs by 2030.⁷ Figure 1 demonstrates the total projected efficiency savings the State can be expected to achieve under the existing ETIP/BMP and CEF filings—notably, because NYSEDA has yet to release the details of its proposed programs, it is impossible to judge whether the utilities’ proposals are adequate. Accordingly, both the utility and NYSEDA programs must be viewed holistically in order to ensure that the State will make meaningful progress toward its goals.

Figure 1 - Combined NYSEDA and Utility Electric EEPS and BMP Annual Budgets and Targets

⁶ Case 15-M-0252, CEOC and EE for All ETIP and BMP Comments, filed September 28, 2015.

⁷ 2015 New York State Energy Plan, <http://energyplan.ny.gov/>.



EE for All recommends that the Commission establish incentives strong enough to encourage utilities to over-comply with their targets. Such incentives can include a return on efficiency savings above the benchmark, while efficiency savings that come close to, but fall below, the target can be rewarded through an earnings sharing mechanism (“ESM”).

At the same time, the Commission must ensure that utilities don’t “game” the energy efficiency targets by setting lower-than-achievable benchmarks in an effort to benefit from incentives programs. EE for All recommends that the Commission establish an independent process for evaluating the utilities’ efficiency targets as compared to the potential for energy savings within their service territories.

New York State can achieve greater statewide energy efficiency savings if utilities expand and improve their multifamily programs. As EE for All and CEOC expressed in our ETIP/BMP comments, we commend several of the utilities for lifting certain eligibility restrictions from their multifamily programs, and urge other New York utilities to follow suit.

Once again, EE for All strongly recommends that multifamily buildings be treated as a separate sector for the purposes of energy efficiency program financing, data collection, and implementation. Because affordable multifamily housing presents unique challenges and opportunities, treating multifamily buildings as a separate sector can maximize energy savings

and provide many co-benefits, including reducing residents' energy cost burden, providing healthier and safer housing, and servicing residents who may not otherwise be able to engage in clean energy markets.

Furthermore, EE for All recommends that the Commission convene a technical conference on the future of energy efficiency programs, in order to further flesh out and resolve the above questions and issues. Such a conference should, in particular, focus on the aforementioned need to ensure that utility energy efficiency programs are considered alongside NYSERDA's CEF, and should explore mechanisms for both taking a holistic view of all energy efficiency programs in light of the State Energy Plan goals, and for ensuring that the utilities and NYSERDA do not unnecessarily duplicate efficiency efforts or compete for customers.

Finally, by Order issued October 5, 2015, the Commission opened for public participation the proceeding relating to the transfer of responsibility over New York's Technical Resource Manual ("TRM") from DPS Staff to the collective utilities.⁸ The TRM is an important element in utility energy efficiency programs, including residential and multifamily buildings, as it provides for standardized methods for measuring utility efficiency program savings. EE for All supports the Commission's decision to make this proceeding public and to ensure a more transparent process.

4. Establish Earnings Impact Mechanisms & Scorecards That Encourage Investment in Low Income and Environmental Justice Communities

EE for All supports the use of Earnings Impact Mechanisms ("EIMs") and the development of scorecards to track utility performance. Given that REV markets for DER are in

⁸ New York Public Service Commission, Notice Concerning a New Matter Number for the New York Technical Resource Manual, Matter 15-01319, issued October 5, 2015.

their earliest stages of development, EIMs will be a critical near term policy tool for increasing investment in clean energy. While establishing specific, more aggressive utility targets for energy efficiency will provide the floor for energy efficiency investment and prevent any backsliding against the state's overall energy efficiency goals, EIMs are likely to be the mechanism that drives increased investment beyond the Commission's regulatory requirements.

Carefully designed and thoughtfully implemented EIMs could put New York on the path to reaching its goal of achieving 600 trillion BTU energy savings goal included in the State Energy Plan.⁹ Well-designed EIMs would also help New York capture more of the vast reservoir of untapped energy efficiency potential that exists in the multifamily sector which we have documented in previous filings.¹⁰ Well-designed scorecard metrics would also provide much needed information on the extent to which utilities are achieving public policy objectives for low-to-moderate income families and encouraging DER investment in environmental justice communities.

Although the White Paper proposes several EIMs to reward utility performance in key areas, it does not address important considerations in the design of these tools. The White Paper does not go into detail on what the targets would be and the magnitude of financial rewards or penalties for achieving or failing to achieve an EIM. The White Paper also fails to consider the ways in which EIMs may interact with each other. DPS staff should ensure that incentives, or penalties, do not doubly reward utilities for achieving a desired outcome, or doubly penalize them for failing to do so. A robust stakeholder process to carefully consider the design of EIMs would help avoid some of these traps.

⁹ 2015 New York State Energy Plan, <http://energyplan.ny.gov/>.

¹⁰ Case 14-M-0094. EE for All Comments on the Clean Energy Fund Information Supplement, filed August 14, 2015.

We recommend that the Commission clarify the process for establishing EIMs and scorecards in Track 2. We request that the Commission consider stakeholder input and comment on the further development of these important policy tools. The precise definitions of the EIMs and scorecards metrics should be established prior to the submission of the utility Distributed System Implementation Plans (“DSIPs”) that are currently due in June 2016. We offer specific comments on the White Paper’s proposed EIMs, as well several recommendations on creating additional scorecard metrics.

(a) Energy Efficiency

As stated earlier, energy efficiency EIMs are likely to play an important role in driving future investment in energy efficiency in the affordable multifamily sector. EIMs should take into account both the demand savings (MW) at the local distribution peak, as well as the annual lifecycle MWh savings. EIM’s based on the lifecycle MWhs savings should also reward performance beyond regulatory targets. For example, earnings could be awarded by achievement of MWh savings threshold, with significantly higher earnings potential awarded for performance beyond the Commission’s stated goals.

In addition, we recommend that participation in energy efficiency programs also be an EIM, defined as the percentage of customers participating in the utilities energy efficiency program per year, by rate class. For example, an EIM should be constructed to incentivize the greater deployment of energy efficiency measures within low-to-moderate income households.

In addition, given the untapped potential of the multifamily sector, EE for All recommends that Staff establish a scorecard metric for the deployment of energy efficiency measures in the multifamily housing sector.

(b) Affordability

EE for All supports the use of EIMs for affordability, but suggests that this set of incentives include three components: 1) low-income participation rates in energy efficiency, demand response, and time of use programs, 2) reductions in terminations, and 3) reductions in uncollectible expenses.

We also note that metrics based on reductions in residential terminations and bad debt write-offs may be easily measured, but they may be highly correlated with variables outside of utility control, such as overall economic conditions. To account for this, reductions in termination and bad debt could be normalized relative to a publicly available economic index, such as the unemployment rate. In addition, achieving a score of better than two standard deviations from the five-year average will likely be very difficult to do; the EIM target should be considered in light of the literature on utility performance improvement in this specific area.

Affordability scorecard metrics should be created for annual and lifecycle MWh savings, and for annual and lifecycle bill reductions per low income participant, and by the deployment of energy efficiency, demand response and other measures in low income areas.

(c.) Environmental Justice

Using GIS data and mapping tools provided by the NYS Department of Environmental Conservation, a scorecard metric should be established for tracking the installation of specific DER in potential environmental justice areas. The DER installation data should be broken down by resource type (EE, CHP etc.). The metric serves two purposes. First, it would help ensure that certain historically disadvantaged communities are not overlooked by DER providers. Second, it may also signal whether additional environmental protections and restrictions would be warranted in the event that certain distributed energy resources become concentrated in vulnerable neighborhoods.

5. Reject Fixed Charge Increases And Study Demand Charges.

At the outset, EE for All notes that we strongly oppose an increase in fixed charges as part of REV. While fixed charges have a role in utility ratemaking, they are problematic for several reasons. First, an increase in customer charges can have an especially strong negative impact on low use customers, who are often low-income customers, including the elderly and students. Second, because customers pay the same fixed charge regardless of how much they reduce their electricity usage through DER or efficiency deployments, fixed charges can both dis-incentivize customers from investing in DER and energy efficiency, and devalue existing investments in such technologies. Accordingly, fixed charges are, as a general principle, antithetical to REV's goal of moving the utility industry to a market-based system.

While EE for All understands the potential value of Staff's recommendation to establish a coincident-peak demand charge as one prong of a three-part rate structure based on volumetric, fixed, and demand-based rates, we are concerned that such a charge can, if not properly designed, pose a number of problems for low-income customers. More specifically, low-income customers must have the information and resources to *respond* to a demand charge by adopting technologies or behaviors that allow them to reduce their usage.

Based on the foregoing, EE for All recommends that, before levying a demand charge, several key questions be answered. First and most importantly, the utilities must determine whether customers, especially low-income customers, have the necessary information and resources needed to adjust their electricity usage in response to the demand charge. If low-income customers do not currently have the requisite resources and information, the demand charge should not be instituted until programs and support resources have been established to assist customers with managing their usage. In addition to this question, two further issues must

be explored, including whether and how the demand charge might influence customer decisions to invest in DERs, and how to best design demand charges to reflect long-term marginal costs and the environmental benefits of DER.

6. Accurately Valuing DER

EE for All supports the DPS Staff recommendation to calculate the value of DER based on locational marginal price plus the distribution value, or LMP+D. In order to capture the accurate DER value, an entire range of environmental, public health and non-energy benefits should be incorporated into this calculation.

We take this opportunity to restate some key points regarding the REV Benefit Cost Analysis (“BCA”) framework. Namely, we wish to reiterate: (1) the importance of using the Societal Cost Test as the primary methodology for assessing REV investments, and the lack of value the Rate Impact Measure (“RIM”) test provides; (2) the need to identify important non-energy benefits and quantify them to the greatest extent possible; (3) the value of the use of a societal discount rate, rather than the utility weighted average cost of capital; and (4) the need to consider environmental externalities within the BCA.

(a) The Societal Cost Test and the RIM Test

It is imperative that low-income communities have access to affordable energy. In order to best serve low-income communities and avoid “heat or eat,” a focus must be placed on lowering bills. The RIM test is inadequate and misleading because it measures changes to rates, not bills. The Societal Cost Test, by contrast, considers communal costs and benefits beyond simply measuring prices. The Societal Cost Test also includes environmental externalities, which are of prime importance in environmental justice communities.

(b) Non-Energy Benefits

EE for All supports the inclusion of non-energy benefits (“NEBs”) within BCA framework accounting. We wish to emphasize, however, the importance of transparency and specificity with regard to which NEBs will be accounted for, and by what methodology. We support the quantitative evaluation of NEBs, but worry that when qualitative evaluation is attempted, it will effectively lead to the exclusion of non-quantitative benefits from much of the analysis.

As a solution, EE for All recommends that utilities and NYSERDA be required to work together to identify key NEBs necessary for planning, and to estimate monetary values for those NEBs to the greatest extent possible. When such estimation is not possible, we suggest that proxies be developed for those NEBs instead.¹¹ NEBs could include among others: reductions in asthma episodes and asthma related medical costs, improved school attendance, increased work attendance and resulting increases in household income, senior injury prevention, improvements in mental health, and other reductions in negative health outcomes. NEB’s absence from benefit-cost tests is often attributed to “hard to measure” benefits. Excluding NEBs from evaluation, however, depresses the full effect of energy efficiency measures, underestimates the program’s benefits for participants, and results in missed opportunities to obtain possible cross sector support for greater allocations of funding for energy efficiency programs.

(c) Societal Discount Rate

EE for All recommends the use of a societal discount rate, rather than the utility weighted cost of capital. The societal discount rate is best able to reflect the value of short- versus long-term costs and benefits to all utility customers, as well as the time preference associated with the

¹¹ For more information, see Northeast Energy Efficiency Partnerships, *Cost-Effective Screening Principles and Guidelines*, November 2014, Chapter 3.

state's energy policy goals. The societal discount rate is also consistent with the use of the Societal Cost Test. Finally, the societal discount rate is consistent with the EPA's discount rate for the social cost of carbon.

(d) Environmental externalities

It is absolutely crucial that externalities be considered within the BCA framework. Environmental externalities are a serious concern for Environmental Justice communities, where localized fossil fuel emissions must also be addressed. Furthermore, a stated policy objective of REV is the “reduction of carbon emissions.”¹² There is no question that externalities must be addressed; the question is how. EE for All recommends that externality values of CO₂ be estimated based on the EPA social cost of carbon. This methodology comes from a credible federal source, is widely used in other applications, is transparent, and is relatively simple to use.

10. Conclusion

EE for All appreciates the efforts of the Commission and Staff throughout this proceeding, and we thank the Commission for this opportunity to provide comments. We emphasize the importance of constant vigilance by the Commission in protecting and serving environmental justice and low-income communities.

To this end, we ask that the Commission limit rate plans to a three year period. We also ask that the clawback mechanism be further modified to ensure utilities are given sufficient incentives to choose third-party DER providers while ensuring consumers do not pay more than necessary for this outcome. We further ask that proper steps are taken to ensure a smooth transition from the current EEPS program to a REV market-based model, and that EIMs be designed so as to best capture the energy efficiency potential of the multifamily housing sector.

¹² Case 14-M-0101, “Order Instituting Proceeding” (Apr. 2014) at 2.

We emphasize that, although fixed charges must clearly be avoided, care must be taken regarding demand charges too, lest they become overly burdensome for low-income customers and tenants in multifamily buildings. Finally, we reiterate the importance of the BCA effectively addressing externalities and non-energy benefits, and that it be designed with low-income and environmental justice concerns at heart; determining the “value of D” also requires and depends on such an approach.

Respectfully Submitted:

[Signatures to Follow]

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