June 17, 2019

The Honorable Michael J. Cusick
Chair, Energy Committee
New York State Assembly
Room 724 Legislative Office Bldg.
Albany, NY 12248

The Honorable Kevin S. Parker
Chair, Energy and Telecommunications Cmte.
New York State Senate
Room 504C, Capital Bldg.
Albany, NY 12247

Re: A.7286 (Cusick) / S.5627 (Parker)

Dear Chairmen Cusick and Parker:

The Energy Coalition (according to their website, "comprised of seven investor-owned New York State electric and natural gas utilities") letter on A.7286 (Cusick)/S.5627 (Parker) does not accurately reflect the positions taken by the Public Service Commission ("PSC") in the March 9, 2017 Value of Distributed Energy Resources ("VDER") order, the current status of interzonal crediting, the legal authority granted to the PSC under said order and Public Service Law ("PSL"), the pricing of projects by location, the value of expanded Community Distributed Generation ("CDG") projects compared to those of larger scale, or the current state of discussions on this matter between the PSC and the utilities.

First and foremost, **utilities have already implemented interzonal crediting and the PSC has approved interzonal CDG projects** – projects within a utility territory but in different New York Independent System Operator ("NYISO") zones. In fact, on October 25, 2018, the Joint Utilities requested an extension in their filing (#726) to comply with the order, which was granted by the PSC in their ruling on the Extension Request (#727) on October 29, 2019, and these changes were reflected in tariffs as of December 1, 2018. Reference made in the letter to wait until this is "implemented and examined" makes no sense.

Second, cross-utility crediting is entirely consistent with the PSC decision and a logical next step in the expansion of solar access to more New Yorkers under the VDER proceeding. The PSC did not formally approve cross-utility crediting as part of the interzonal crediting order, but the Commission made clear that it was the intended next step, ***a natural expansion of that ruling***.

- As noted in Part H of the Summary of Decisions in that PSC ruling entitled "Enabling Participation of Low-Income Customers in VDER Programs and Tariffs," it is stated "The Commission directs Staff to **work with utilities and interested stakeholders to consider an interzonal CDG credit program designed to provide benefits from CDG**

projects interconnected in service territories and load zones other than that of the low-income participant."

- The order continues **"First, consideration should be given to an interzonal CDG credit program designed to provide benefits to interested low-income customers from CDG projects interconnected in service territories and load zones other than their own. Such a program could offer the potential to serve low-income customers in areas, such as New York City, that have proven challenging for development of larger scale CDG projects that benefit from economies of scale.** "
- The March 9, 2017 PSC release expands this further, "**Approximately 70 proposed CDG projects will benefit immediately from today's action and the number of CDG projects moving toward construction is expected to increase following action on additional steps in the coming months**…(**This a)dvances the state's efforts to bring CDG opportunities to low-income customers and neighborhoods, including consideration of a program that would permit the development of a CDG project outside of the utility service territory where the low income participants reside, enabling developers to take advantage of lower project costs."**

Third, the statement that the VDER order is premised on statutory Net Energy Metering ("NEM") authority under Public Service Law ("PSL") Section 66-j is misleading. On Page 4 of this memo you will see the "Legal Authority" section from the original March 2017 VDER Order. Within it, the PSC was granted broad authority beyond the NEM statute to set "tariff provisions and establish…programs governing service, billing, and compensation…" As you will see, the PSC has already invoked this broader authority in the first few paragraphs of the "Legal Authority" section below, adding that they have the authority to "require (the utilities) to comply with the requirements," noting their specific responsibility under the NEM statute to do so and that "subsequent amendments have expanded eligibility and made other minor changes." Additionally, there is no restriction to them extending VDER more broadly than they extended NEM, nor do they need their authority under 66-j to do so, given the much broader authority granted them under PSL.

Fourth, there is no locational arbitrage intended or envisioned. The existing VDER framework is in place and expected to be maintained, so by its very definition there are not any new cost shifts created. Projects will be priced according to where they are built, not according to where the customers they are serving are located.

Fifth, the cost comparison of CDG to much-larger utility scale solar is misleading. CDG was created as an alternative for customers who can't access traditional onsite or roof-top solar. As a distributed energy resource, CDG is actually far more cost-efficient than rooftop solar because projects can be sized up to 5 MWs. However, the Energy Coalition instead compares CDG pricing to large, utility-scale projects that feed directly into the bulk power grid (instead of utility distribution system, as CDG projects do) and have a completely different cost structure without hundreds of customers.

A.7286/S.5627 is designed to further CDG development up to 5MW as allowed by law and regulation, staying within the existing VDER framework, namely the 6 GW goal for solar power in the State that has already been established. This legislation does not seek to expand that, but rather to just make it achievable, and to ensure more equitable participation by a diversity of customers in this transition to a cleaner energy system.

Sixth, the PSC is developing a working group that could address any utility company concerns about billing. On June 5, 2019 in its "Letter Regarding CDG Billing and Crediting" (#835), the PSC announced its intention to convene a "Billing and Crediting Working Group," requesting participation of each of the utilities. Thus, to the extent there is a need for implementation discussions among stakeholders during the 9-month implementation window, it could be incorporated in this existing working group.

In closing, it should be noted that New York's utilities already maintain accounting systems capable of tracking and managing transactions between utility companies and electric service companies (ESCOs). The Commission has been facilitating cross-utility crediting in the telecom industry for decades, such as through settlement processes for interstate, intrastate, and local and long-distance telephone service. Cross-utility crediting fits squarely within the PSC's authority and would expand solar access to millions of additional New Yorkers.

Thank you for your consideration of this information. Please contact me at (516) 554-0375 or shyam@nyseia.com if you have any questions or concerns about this correspondence.

Sincerely,

Shyam Mehta
Executive Director
New York Solar Energy Industries Association (NYSEIA)

ADDENDUM: CASES 15-E-0751 and 15-E-0082, Pages 6-9

LEGAL AUTHORITY: The PSL grants the Commission broad legal authority to prescribe regulatory requirements necessary to carry out the provisions contained therein. For instance, PSL Section 5(1) grants the Commission jurisdiction over the sale or distribution of electricity. Furthermore, PSL Section 5(2) permits the Commission to "encourage all . . . corporations subject to its jurisdiction to formulate and carry out long-range programs, individually or cooperatively, for the performance of their public service responsibilities with economy, efficiency, and care for the public safety, the preservation of environmental values and the conservation of natural resources." Pursuant to PSL Section 65(1), every electric corporation must safely and adequately "furnish and provide [electric] service, instrumentalities, and facilities as shall be safe and adequate and, in all respects, just and reasonable." Section 66(1) extends general supervision to electric corporations having authority to maintain infrastructure "for the purpose of . . . furnishing or transmitting electricity." Pursuant to Section 66(2), the Commission may "examine or investigate the methods employed by. . . corporations . . . in manufacturing, distributing, and supplying . . . electricity," as well as "order such reasonable improvements as will best promote the public interest . . . and protect those using . . . electricity." Moreover, pursuant to Section 66(3) the Commission may prescribe "the efficiency of the electric supply system." **Accordingly, the Commission has the jurisdiction over the electric utilities affected by this order to require them to comply with the requirements outlined herein. In fulfilling its statutory mandate, the Commission has approved tariff provisions and established programs governing service, billing, and compensation for various DER, including distributed generation.** For example, each electric utility's Commission-approved tariff includes standby rates, which govern service to large customers that meet a substantial part of their electric needs through on-site generation, and buy-back service, which governs the purchase of capacity and energy by the utility from qualifying customers.[2] Similarly, each electric utility has demand response programs, which offer incentives or compensation for reductions in peak demand,[3] and several non-wires alternative (NWA) programs are under development, offering compensation to DER, including distributed generation, that supports elimination or deferral of costs associated with traditional infrastructure.[4] **As described in Appendix C, The History of NEM in New York, NEM was established by statute in 1997 and subsequent amendments have expanded eligibility and made other minor changes**.[5] The NEM statutes govern compensation and terms of service for customer-generators that interconnect their eligible generating equipment with a utility's system before a rated generating capacity ceiling for that utility's service territory is reached.[6] Once the ceiling has been exceeded, customer generators are no longer entitled to be provided service, billed, and compensated based on the terms of the statute. The Commission therefore has not only the authority but also the responsibility to define terms of service and compensation for those customer-generators.

Endnotes:

[2] See, e.g., Con Ed Tariff, Schedule for Electricity Service, P.S.C. No. 10 – Electricity, leaves 157-170 and 462-477.

[3] See, e.g., Case 14-E-0423, Proceeding on Motion of the Commission to Develop Dynamic Load Management Programs, Order Adopting Dynamic Load Management Filings with Modifications (issued June 18, 2015).

[4] See, e.g., Case 14-E-0302, Petition of Consolidated Edison Company of New York, Inc. for Approval of Brooklyn/Queens Demand Management Program, Order Establishing Brooklyn/Queens Demand Management Program (issued December 12, 2014).

[5] NEM of wind turbines is governed by PSL §66-l, while NEM of all other technologies is governed by PSL §66-j. The terms and conditions of NEM under the two statutes are essentially identical, except that wind is subject to a separately calculated statutory cap of 0.3% of 2005 electric demand for each utility, and therefore is not counted towards the cap that applies to all other technologies.

[6] Technically, the statutes do not create a cap, but rather require that each utility offer NEM to eligible customer-generators until the specified capacity is reached. PSL §66j(3)(a)-(b). Because utility tariffs have always limited NEM based on the minimum capacity required, that capacity level has generally been described, and will continue to be described in this order, as a cap or a ceiling. PSL §66-j sets initial ceilings of 1% of each utility's 2005 electric demand and provides the Commission with broad discretion to determine what level of NEM above these ceilings is in the public interest. The Commission raised the ceilings several times and ultimately directed that the ceilings float with interconnections.

[7] However, in the Interim Ceilings Order, the Commission explained that the floating ceilings were a temporary measure and that, when a new compensation mechanism was developed, the ceilings would be set based on the existing capacity levels. Where, as here, the Commission finds that additional NEM would no longer be in the public interest, we must determine what form of compensation for new DER projects is consistent with our statutory mandates to ensure safe and adequate service at just and reasonable rates consistent with the public interest and the efficiency of the electric system. Consistent with our statutory duties, with ratemaking principles, and with the goals of REV, in this order we create a compensation structure for those projects based on the benefits they create and the costs they impose.