STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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| Proceeding on the Motion of the Commission in Regard to | ) | |
| Reforming the Energy Vision | ) | |
| | ) | Case 14-M-0101 |
| Staff White Paper on Ratemaking and | ) | |
| Utility Business Models | ) | |

REPLY COMMENT OF THE STAFF OF THE FEDERAL TRADE COMMISSION

November 23, 2015

## I. Introduction

The New York State Public Servicerc Tf 0.0-3(h)-43ich hductNY2(e)6Tc 061(S A(3)3)E-EMC /P .48

48648299-C77205C1695A}; Notice Further Extending Deadline to File Comments on the REV Track 2 Staff White Paper (Sept. 28, 2015), available at http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={683EC92E-11DD-47B4-A78E-CA0A1F596DCC}.

[2] This comment expresses the views of the FTC's Office of the General Counsel, Office of Policy Planning, and Bureau of Economics. The comment does not necessarily represent the views of the FTC or of any individual Commissioner. The Commission, however, has voted to authorize the filing of this comment.

[3] Reply Comment of the Staff of the Federal Trade Commission Before the State of New York Public Service Commission, Proceeding on the Motion of the Commission in Regard to Reforming the Energy Vision: DPS Staff Straw Proposal on Track One Issues, Case No. 14-M-0101 (Oct. 23, 2014), available at

system in the face of

anticompetitive incentives that we identified in our first comment in the REV proceeding (*supra* note 3).[7]

As we set forth in Section III of this comment, we concur with the Revenues White Paper that conventional cost-of-service ratemaking is inadequate to achieve the goals of the REV process. The Revenues White Paper's statement of principles sets forth REV's objectives exclusively in terms of lower prices or lower power bills. We suggest that the statement of principles expand its articulation of the goals of the REV proceeding to include improvements in system efficiency and increases in the value that customers derive from electric service.[8] Some customers clearly prefer higher-quality electric service even if they pay more than they would for lower-quality service.[9] These customers would be harmed by a system that exclusively pursued a goal of lower prices or lower power bills.

In Section IV of our comment, we commend the Revenues White Paper for presenting approaches that align distribution utility incentives with customer values. At the same time, we encourage the NY PSC to consider concerns about potential cross-subsidization by distribution utilities and unfair competition in services provided to DER investors, owners, and organizers. The Market-Based Earnings proposal for distribution utilities could result in discrihTJ 0 Tc 0 o(u)2(tio)2(n ili

Paper.[10] NEM

advocating competition and consumer protection principles with state utility commissions, state legislatures, the Department of Energy (DOE), and the Federal Energy Regulatory Commission (FERC).[15] The FTC's competition advocacy program also has issued two staff reports on electric power industry restructuring issues at the wholesale and retail levels.[16] In addition, the implies). Other benefits that customers may prefer include power quality, system reliability and resiliency, customer choice, reduced environmental impacts, and innovation.[18] The text below the first heading could be revised to account for these additional forms of benefits, for example, noting that the REV proceeding is expected to lead to improvements that include "reductions in the total customer bills or other benefits that customers may prefer."

faced obstacles to gaining approvals to connect to the grid, this could indirectly raise their costs by making it more difficult and costly to attract microgrid investors, owners, and organizers as clients. Similarly, the DSP operator could favor its affiliates in obtaining services for its own DER projects.

We urge the NY PSC to assess whether the MBEs, as described in the Revenues White Paper, could simply incentivize and enable a DSP operator to discriminate against the unaffiliated firms that provide services to DER projects, even if the distribution utility no longer had incentives to discriminate against the independent DER projects themselves.[24]

More generally, we encourage the NY PSC to evaluate whether (to paraphrase a passage on page 23 of the Revenues White Paper) it is critical to eliminate, as much as possible, any structural financial incentive embedded in regulation for a distribution utility to favor its affiliated DER service providers over unaffiliated, competing DER service providers.

<u>EIMs</u>. EIMs and Scorecards are the methods proposed in Section III.C. of the Revenues White Paper for implementing Performance-Based Regulations. Performance-Based Regulations set utility revenues by assessing how well utilities perform compared to regulatory goals or standards. Accordingly, the proposed EIMs provide financial incentives (positive or negative) that vary by the degree to which the distribution utility achieves the NY PSC's articulated public policy goals. Scorecards measure performance but do not involve explicit financial rewards or penalties for superior or subpar performance. The Revenues White Paper discusses the process used to identify 26 such measures and to establish priorities among them.[25] The categories of EIMs include peak load reductions,[26] energy efficiency, customer engagement and information access, affordability, and interconnection.

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[24] The FTC staff addressed similar concerns in a comment (esp. at 17) in FERC's Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines, FERC Dkt. No. RM87-5-000 (Jan. 29, 1987), available at https://www.ftc.gov/sites/default/files/documents/advocacy_documents/ftc-staff-comment-federal-energy-regulatory-commission-concerning-inquiry-alleged- 5 concern-inq

energy to reduce monthly power bills quickly. Accurate price signals also could help a customer plan longer-term bill savings through self-supply of some elements of electricity service.[32]

The Revenues White Paper also highlights the peak shaving reward program instituted by Baltimore Gas and Electric.[33] As we indicated in a comment to the Massachusetts Department of Public Utilities,[34] the Smart Energy Rewards program has the particular virtue of delivering dynamic price incentives to customers without concurrently increasing the risk for non-participating customers. We attach a graphic developed by The Brattle Group that describes the risk/reward differences among alternative dynamic pricing approaches. We encourage the NY PSC to evaluate the risk/reward differences among various types of dynamic pricing systems for residential and small commercial and industrial customers (who now generally pay flat rates for power).[35] Even if rate structures migrate toward real-time pricing, the most granular forms of pricing include elements related to the benefits and costs of circuit-level balancing of supply and demand. By beginning with a dynamic pricing approach and low customer risk, the program may be able to build consumer familiarity with dynamic prices, with less concern for equity effects

Finally, the Revenues White Paper's proposal to base each customer's standby rates on that customer's actual use of standby service is innovative. This approach may alleviate the concerns summarized in the Revenues White Paper, that by exceeding the costs of providing standby service, standby rates could impede entry by beneficial DERs.