

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

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 Service Commission (NY PSC) has invited comments concerning the NY PSC “Staff White Paper on Ratemaking and Utility Business Models” (Revenues White Paper) in the Reforming the Energy Vision (REV) proceeding.<sup>1</sup> The Federal Trade Commission (FTC) staff appreciates the opportunity to submit this comment in reply to certain comments filed last month concerning the Revenues White Paper.<sup>2</sup>

As we have previously,<sup>3</sup> we commend the NY PSC and its staff for their leadership in employing the REV proceeding to rethink the structure and operations of the electric distribution

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<sup>1</sup> State of New York, Dep’t of Public Service, *Staff White Paper on Ratemaking and Utility Business Models* (July 28, 2015), available at <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={48954621-2BE8-40A8-903E-41D2AD268798}>; *Notice Inviting Public Comment on White Paper on Ratemaking and Utility Business Models* (July 28, 2015), available at <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={7487A500-A33E-4864-8299-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={683ECE1D-92ED-47B4-A78E-CA0A1F596DCC}>.

<sup>2</sup> This comment expresses the view 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.

<sup>3</sup> 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 a number of key developments. Those developments include: (1) important technical advances in distributed energy resources (DERs), together with tools to optimize the inclusion of DERs at the distribution level of the power system;<sup>4</sup> (2) increasing concerns about the environmental impacts of fossil-fuel generation; and (3) growing evidence of consumer interest in customized electric service, including differing preferences for increased reliability and resiliency.<sup>5</sup>

We submit this comment against the backdrop of NY PSC's earlier decisions in the REV proceeding. The first decision allowed each distribution utility to acquire DERs under some circumstances, and the second designated each distribution utility as its own Distributed System Platform (DSP) operator.<sup>6</sup> Our comment draws on the FTC's experience both in enforcing competition laws and in advising federal and state regulatory agencies about the competitive effects of an array of regulatory programs focused on the electric power system.

The Revenues White Paper seeks to describe an alternative to the present cost-of-service regime for compensating distribution utilities. To further its aim of financially realigning the incentives of distribution utilities, the Revenues White Paper recommends changes in the bases on which utilities obtain revenues from electricity customers and also proposes performance-based rate incentives. Some of these proposed incentives are specifically designed to address

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[https://www.ftc.gov/system/files/documents/advocacy\\_documents/federal-trade-commission-staff-reply-comment-new-york-state-public-service-commission-reforming/141024nypsccomment.pdf](https://www.ftc.gov/system/files/documents/advocacy_documents/federal-trade-commission-staff-reply-comment-new-york-state-public-service-commission-reforming/141024nypsccomment.pdf); 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: Staff White Paper on Benefit-Cost Analysis (Sept. 10, 2015), *available at* [https://www.ftc.gov/system/files/documents/advocacy\\_documents/ftc-staff-reply-comment-state-new-york-public-service-commission-reforming-energy-vision-proceeding/150910nybcaftcreply.pdf](https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-reply-comment-state-new-york-public-service-commission-reforming-energy-vision-proceeding/150910nybcaftcreply.pdf).

<sup>4</sup> See, e.g., Gerry Braun & Stan Hazelroth, *Energy Infrastructure Finance: Local Dollars for Local Energy*, 28 *Electricity J.* 6, 9, 19 (June 2015).

<sup>5</sup> See, e.g., Patty Durand, *Smart Grid Isn't Dead*, 153 *Pub. Util. Fortnightly* 14 (Oct. 2015) (consumer survey results indicate that substantial segments of customers are primarily interested in grid modernization that would deliver environmental benefits (30 percent), lower energy bills (20 percent), and high-technology innovations in electric service (15 percent)); see also Wannie Park, *Efficiency on Display*, 153 *Pub. Util. Fortnightly* 18 (Oct. 2015) (in areas of Texas with retail electricity competition, low-income customers engage intensively in energy use management when energy meter display devices are available to them under the "LITE-UP Texas" program).

<sup>6</sup> At the local distribution system level, the DSP operator plays a role analogous to that of the New York Independent System Operator in balancing electricity demand and supply.

anticompetitive incentives that we identified in our first comment in the REV proceeding (*supra* note 3).<sup>7</sup>

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.<sup>8</sup> Some customers clearly prefer higher-quality electric service even if they pay more than they would for lower-quality service.<sup>9</sup> 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 discrimination by DSP operators against unaffiliated firms that provide services to DER projects.

Also in Section IV, we further applaud the NY PSC staff for proposing a portfolio of performance-based rates to better align the financial incentives of distribution utilities with the public policy goals of the REV proceeding. We suggest adjustments to some of the financial incentives in order to improve customer benefits and to avoid harm to competition and efficiency. We also highlight consumer safety and privacy aspects of the Customer Engagement and Information Access Earnings Impact Mechanism.

Finally, in Section V, we commend the Revenues White Paper for focusing on the importance of accurate and timely price signals for system efficiency and efficient siting, design, and utilization of DERs. The Smart Home Rate proposal seems particularly attractive from this perspective.

Our comment also responds to initial third-party comments on the Revenues White Paper. For example, the comment by the National Energy Marketers Association (NEM) and the comment by the Joint Utilities both expressed concern about the clarity and adequacy of the alternative revenue mechanisms for distribution utilities as set forth in the Revenues White

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<sup>7</sup> See, e.g., Revenues White Paper at 21-27, 56-57 (descriptions of customer engagement and information access earnings impact mechanisms), 58-59 (description of the interconnection earnings impact mechanism).

<sup>8</sup> These goals receive prominent attention in Sections III and IV of the Revenues White Paper.

<sup>9</sup> As we elaborate below, higher-quality service includes (among other attributes) greater power quality, system reliability, system resiliency, customer choice, improved environmental impacts, and innovation.

Paper.<sup>10</sup> NEM focused on whether the incentives are sufficient to create alignment between utility decisions and the value that independent DERs may deliver to customers and the power system.<sup>11</sup> The Joint Utilities voiced concern that the proposed alternative revenue mechanisms are too uncertain to sustain utilities' operations.<sup>12</sup> Our comment focuses on competition-based concerns about proposed alternative revenue mechanisms.

## II. Interest and Experience of the FTC

The FTC is an independent agency of the United States Government responsible for maintaining competition and safeguarding the interests of consumers. The FTC fulfills these missions through law enforcement, policy research, and advocacy. For example, in the field of consumer protection, the FTC enforces Section 5 of the Federal Trade Commission Act, which prohibits unfair or deceptive acts or practices. In its competition mission, the FTC enforces antitrust laws regarding mergers and unfair methods of competition that harm consumers. In addition, the FTC often analyzes regulatory or legislative proposals that may affect competition, allocative efficiency, or consumer protection. It also engages in considerable consumer education through its Division of Consumer and Business Education.<sup>13</sup> In the course of all of this work, the FTC applies established legal and economic principles as well as recent, innovative developments in economic theory and empirical analysis.

The energy sector, including the electric power industry, has been an important focus of the FTC's merger review and other antitrust enforcement, competition advocacy, and consumer protection efforts.<sup>14</sup> In particular, the FTC and its staff have filed numerous comments

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<sup>10</sup> National Energy Marketers Association, *Comments of the National Energy Marketers Association* (Oct. 26, 2015) (NEM Comment), available at <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={8851383E-E18D-4CFD-A44F-4AAB436DDCEF}>; Central Hudson Gas & Electric Corp., *et al.*, *Initial Comments of the Joint Utilities on the July 28, 2015 Staff White Paper on Ratemaking and Utility Business Models* (Oct. 26, 2015) (Joint Utilities Comment), available at <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={2449AFFE-F727-43AD-A931-72F788BEE688}>.

<sup>11</sup> NEM Comment at 2-5.

<sup>12</sup> Joint Utilities Comment at 2.

<sup>13</sup> For an overview of the FTC's education efforts, see the FTC staff's comment to the Consumer Financial Protection Bureau concerning Request for Information on Effective Financial Education, Docket No. CFPB-2012-0030 (Nov. 2, 2012), available at <http://www.ftc.gov/os/2012/11/1211cfpb.pdf>.

<sup>14</sup> See, e.g., *In re DTE Energy Co.*, FTC Dkt. No. C-4008 (2001) (consent order), available at <http://www.ftc.gov/enforcement/cases-and-proceedings/cases/2001/05/dte-energy-company-and-mcn-energy-group-inc>; *In re PacifiCorp*, File No. 971 0091 (1998) (consent agreement), available at <http://www.ftc.gov/sites/default/files/documents/cases/1998/02/9710091.agr.htm>; FTC Conference on Energy Markets in the 21<sup>st</sup> Century: Competition Policy in Perspective (Apr.

advocating competition and consumer protection principles with state utility commissions, state legislatures, the Department of Energy (DOE), and the Federal Energy Regulatory Commission (FERC).<sup>15</sup> The FTC's competition advocacy program also has issued two staff reports on electric power industry restructuring issues at the wholesale and retail levels.<sup>16</sup> In addition, the FTC staff (along with staff from FERC, the Department of Justice, the Department of Agriculture, and DOE) contributed to the work of the Electric Energy Market Competition Task Force, which issued a *Report to Congress* in the spring of 2007.<sup>17</sup>

### III. Limitations of Conventional Cost-of-Service Ratemaking (Sections I and II of the Revenues White Paper)

The Revenues White Paper includes a statement of the principles that form the basis for the remainder of the document. We have one substantive concern about this statement of principles and framework. The first item in the list – “[a]llign earning opportunities with customer value” (at 7) – is an appealing way to emphasize the importance of better matching electricity services to customers’ preferences. As currently worded, however, the text that fleshes out that heading is too restrictive. The primary problem is that it limits the description of potential benefits from the REV proceeding to price or quantity effects (as the description

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10, 2007), available at <http://www.ftc.gov/news-events/events-calendar/2007/04/energy-markets-21st-century-competition-policy-perspective>.

<sup>15</sup> A listing, in reverse chronological order, of FTC and FTC staff competition advocacy comments to federal and state electricity regulatory agencies is available at [http://www.ftc.gov/policy/advocacy/advocacy-filings?combine=&field\\_matter\\_number\\_value=&field\\_advocacy\\_document\\_terms\\_tid=5290&field\\_date\\_value%5Bmin%5D%5Bdate%5D=&field\\_date\\_value%5Bmax%5D%5Bdate%5D=&=Apply](http://www.ftc.gov/policy/advocacy/advocacy-filings?combine=&field_matter_number_value=&field_advocacy_document_terms_tid=5290&field_date_value%5Bmin%5D%5Bdate%5D=&field_date_value%5Bmax%5D%5Bdate%5D=&=Apply). In addition, the FTC's Bureau of Consumer Protection has been monitoring the evolving uses of energy-related consumer data for privacy and data security issues. See, e.g., Letter from Jessica L. Rich, Dir., Bureau of Consumer Protection, FTC, to Eric Lightner, Director, Federal Smart Grid Task Force, Office of Electricity Delivery and Energy Reliability, U.S. Dep't of Energy, concerning a Voluntary Code of Conduct for Utilities and Third Parties Providing Consumer Energy Use Services (Oct. 29, 2014), available at [https://www.ftc.gov/system/files/documents/public\\_statements/599251/141029consumer\\_energy\\_vcccomment.pdf](https://www.ftc.gov/system/files/documents/public_statements/599251/141029consumer_energy_vcccomment.pdf).

<sup>16</sup> FTC Staff Report, *Competition and Consumer Protection Perspectives on Electric Power Regulatory Reform: Focus on Retail Competition* (Sept. 2001), available at <http://www.ftc.gov/reports/competition-consumer-protection-perspectives-electric-power-regulatory-reform-focus-retail>; FTC Staff Report, *Competition and Consumer Protection Perspective on Electric Power Regulatory Reform* (July 2000), available at <http://www.ftc.gov/reports/competition-consumer-protection-perspectives-electric-power-regulatory-reform> (containing edited compendium of excerpts from previous comments that the FTC and its staff provided to various state and federal agencies).

<sup>17</sup> That report is available at <http://www.ferc.gov/legal/fed-sta/ene-pol-act/epact-final-rpt.pdf>.

implies). Other benefits that customers may prefer include power quality, system reliability and resiliency, customer choice, reduced environmental impacts, and innovation.<sup>18</sup> The text below the first heading could be revised to account for these additional forms of benefits by, 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.*”

The Revenues White Paper accurately describes the subpar performance, in terms of reduced innovation and lower efficiency, that may result from a conventional cost-of-service approach.<sup>19</sup> The Revenues White Paper also catalogues (at 20-21) many sources of improved economic performance that have been associated with the widespread transition to competition in the wholesale electric power sector. Section II.B.1. of the Revenues White Paper provides a well-reasoned discussion about why the cost-of-service approach cannot work well in the context of the REV proceeding. This discussion relates to the incentive problems highlighted in our first comment in the REV proceeding. Specifically, in the context of the conventional cost-of-service approach, we observed that assigning the role of DSP operator to distribution utilities put competition and economic performance at risk.<sup>20</sup> Accordingly, we agree with the Revenues White Paper’s conclusion regarding the DSP operator: “It is critical . . . to eliminate, as much as possible, any structural financial incentive embedded in regulation for a [distribution] utility to favor its own capital spending over third-party activity that meets system needs at lower cost to ratepayers.”<sup>21</sup>

We commend the Revenues White Paper for ably addressing the primary concern about discrimination by distribution utilities against unaffiliated DER projects. The White Paper approached this policy challenge both by emphasizing changes in the way that revenues are obtained from electric distribution customers and by proposing performance-based rate incentives to directly counter anticompetitive incentives that could linger from the past. More generally, we commend the Revenues White Paper for aligning distribution utility incentives with customer benefits by squarely addressing utilities’ incentives to undermine the competition posed by unaffiliated DERs.

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<sup>18</sup> Sections III and IV of our comment on the NY PSC Staff’s White Paper on Benefit-Cost Analysis, *supra* note 3, made a similar point.

<sup>19</sup> Revenues White Paper at 18-19.

<sup>20</sup> See 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, *supra* note 3, at 2-4, 6 *et seq.*

<sup>21</sup> Revenues White Paper at 23. Such third-party activity can benefit not only ratepayers but also society at large. The stated goals of the REV proceeding encompass other policy areas, including reductions in carbon emissions, enhanced customer knowledge, actively competitive markets (“market animation”), and fuel diversity.

#### IV. Aligning Customer Value with Earnings Opportunities (Section III of the Revenues White Paper)

Section III of the Revenues White Paper discusses alternative revenue sources for distribution utilities, including market-based earnings (MBEs) and earnings impact mechanisms (EIMs).

**MBEs.** A key concept in the discussion of MBEs (Section III.B. of the Revenues White Paper) is that the DSP operator offers a variety of services to grid users, which include DER investors, owners, and organizers that are unaffiliated with the distribution utility. The Revenues White Paper discusses several ways in which this approach will present DSP operators with financial incentives that align with the goal of increasing the value of electric service to customers, as well as with the REV proceeding's other policy objectives. This discussion explains how changing the sources of DSP operator revenues may turn utility financial incentives toward serving the value that owners get from their DER projects.

The Revenues White Paper does not appear to address the potential for DSP operators to raise the costs of – or otherwise discriminate against – *independent providers of services to DER projects*. As envisioned by Section III.B. of the White Paper, affiliates of the incumbent DSP operator would provide services for DER projects, and thus the incumbent DSP operators (the distribution utilities) would become competitors of independent firms also providing services for DER projects, while retaining control over the timing and costs of connections between DER projects and the distribution system.

To understand the potential discrimination and associated efficiency concerns raised by this proposed arrangement, consider a DSP operator whose affiliates offer microgrid engineering services.<sup>22</sup> It is unclear whether rules or competitive pressures would compel the DSP operator to compete on an even playing field with the microgrid engineering services offered by independent competitors. In the case of independent microgrid designs, the DSP operator's incentives and range of discretion in accommodating and authorizing microgrid connections to the larger grid could generate credible claims of bias. A DSP operator would have financial incentives and the means to raise the costs that its rivals face to provide services to DER projects. Bias against connecting microgrid projects served by independent microgrid engineering firms could raise the costs of unaffiliated microgrid engineering services directly or indirectly, resulting in customers of those services potentially paying higher prices and/or receiving lower-quality services.<sup>23</sup> For example, if equally efficient, independent microgrid engineering firms

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<sup>22</sup> *Id.* at 29-30 (specifically identifying microgrid engineering services as an area of potential new revenue growth for distribution utilities).

<sup>23</sup> Plausible ways to raise independent microgrid engineering firms' costs directly include causing unwarranted delays or requiring excessive documentation. For a general discussion of the economics involved in raising rivals' costs, see Thomas G. Krattenmaker & Steven C. Salop, *Anticompetitive Exclusion: Raising Rivals' Costs to Achieve Power over Price*, 96 YALE L.J. 209, 234-38 (1986); Steven C. Salop & David T. Scheffman, *Raising Rivals' Costs*, 73 AM. ECON. REV. 267 (1983).

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.<sup>24</sup>

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.

**EIMs.** 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.<sup>25</sup> The categories of EIMs include peak load reductions,<sup>26</sup> energy efficiency, customer engagement and information access, affordability, and interconnection.

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<sup>24</sup> The FTC staff addressed similar concerns in a comment (esp. at 7-11) 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-anticompetitive/p874632.pdf](https://www.ftc.gov/sites/default/files/documents/advocacy_documents/ftc-staff-comment-federal-energy-regulatory-commission-concerning-inquiry-alleged-anticompetitive/p874632.pdf). The FTC staff also commented on several occasions on proposed codes of conduct for utility affiliates, most recently in the Comment of the Staff of the Bureau of Economics of the Federal Trade Commission Before the New Mexico Public Regulation Commission, In the Matter of the Petition of the Utility Division Staff of the Public Regulation Commission for Rulemaking, Adopting NMPRC Rule 460, Establishing a Code of Conduct for Public Utilities and Affiliates Under the Restructuring Act, Utility Case No. 3106 (Dec. 6, 1999), *available at* [https://www.ftc.gov/sites/default/files/documents/advocacy\\_documents/ftc-staff-comment-new-mexico-public-regulation-commission-concerning-code-conduct-public-utilities/v990017.pdf](https://www.ftc.gov/sites/default/files/documents/advocacy_documents/ftc-staff-comment-new-mexico-public-regulation-commission-concerning-code-conduct-public-utilities/v990017.pdf).

<sup>25</sup> For a discussion of considerations involved in the selection of performance metrics, *see* Benjamin H. Mandel, *Tailoring Performance Incentives to Meet Multifaceted Goals of Electricity Policy*, 28 *Electricity J.* 20, 23-24 (July 2015).

<sup>26</sup> The key objective with peak load reductions is to lower the stress on the grid in order to preserve reliability and reduce costs. As DERs become more prominent in New York State, the periods of stress on the grid may shift, as has occurred in California. *See* California Independent

EIMs may facilitate effective competition to the extent they seek to counter residual incentives to discriminate against unaffiliated DERs. The use of Scorecards for the same purpose could potentially alert regulators to persistent performance deficiencies (relative to goals or standards) that could indicate lingering incentives to discriminate against unaffiliated DER investors, owners, or organizers. The NY PSC could also take a similar approach to counter a distribution utility's incentives to discriminate against independent firms that compete against the utility's affiliates in providing services to DER projects. To do so, the NY PSC could create additional EIMs or Scorecards designed to mitigate incentives to raise the costs of, or otherwise discriminate against, these independent service providers.

The third EIM category (Customer Engagement and Information Access<sup>27</sup>) highlights access to consumer data by customers and by DER investors, owners, and other entities. We note that this EIM category warrants additional attention as it relates to consumer privacy and data security considerations. The Revenues White Paper aims to encourage more sharing and analysis of data, including data about individual households. Specific EIM proposals include metrics to gauge utilities' success in, for example, increasing consumers' access to and engagement with their own data; enabling consumers to share their data with third-party providers of DERs and vendors; and facilitating information-sharing among utilities, third parties, and consumers through an online portal. Increased sharing of energy data can benefit consumers – for example, by giving them information about their own energy usage that they can use to reduce their energy footprint – but it also can increase risks to consumer privacy. It is important to consider whether sharing is appropriate and to provide suitable safeguards for consumers' privacy and security whenever consumer data are transferred, shared, or analyzed. We are pleased that the NY PSC has also issued a separate request for public comment on its “Distributed System Implementation Plan Guidance,”<sup>28</sup> so that privacy and security issues get full consideration at this stage of the REV proceeding.

The NY PSC also may wish to expand the Revenues White Paper's list of EIMs and Scorecards to include the value that customers derive from customization of electricity services. Although the extant Scorecard measures for customer satisfaction and customer enhancement may cover this benefit to some extent, transparency might be better served by creating one or more Scorecards that focus explicitly on: (1) how advances in DER technology have allowed

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System Operator, *What the duck curve tells us about managing a green grid*, available at [http://www.caiso.com/Documents/FlexibleResourcesHelpRenewables\\_FastFacts.pdf](http://www.caiso.com/Documents/FlexibleResourcesHelpRenewables_FastFacts.pdf).

<sup>27</sup> Revenues White Paper at 56-57.

<sup>28</sup> State of New York, Dep't of Public Service, *Staff Proposal: Distributed System Implementation Plan Guidance* (Oct. 15, 2015), available at <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={F3793BB0-0F01-4144-BA94-01D5CFAC6B63}>; *Notice Inviting Public Comment on Distributed System Implementation Plan Guidance* (Oct. 15, 2015), available at <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={CB29D2A1-1C33-46D3-A9AB-ED690DD7FE90}>.

customers to customize their electric services; (2) how DSP operators have helped inform customers about the potential value of customizing; and (3) how better and more abundant information has allowed customers to better match their preferences for electric services. Yardstick (comparative) EIMs and Scorecards may be attractive initially because they can be easier to develop and administer than quantitative performance measures or standards.<sup>29</sup>

## **V. Rate Design and DER Compensation (Section IV of the Revenues White Paper)**

We believe that the Revenues White Paper correctly identifies the importance of accurate and timely price signals as the means to gain the benefits of competitive markets and efficient investment, placement, and operation of DERs. Accurate price signals cause customers to economize on consumption, which delivers the incentives that drive improved economic performance, to the benefit of customers and with associated environmental benefits. Inaccurate price signals lead to distortions in DER investment levels, siting, and operating decisions. Because many power system assets depreciate relatively slowly, distortions in investment decisions can create inefficiencies in a power system that persist for many years.

Similarly, the Revenues White Paper correctly emphasizes the importance of dynamic prices because costs and prices in the power system vary dramatically over even brief time periods. Particularly with respect to DERs, short-term price signals that include local distribution conditions can be vital in making efficient DER investment, siting, and operating decisions. As the Revenues White Paper notes, advanced electric meters are generally necessary to convey accurate and timely price signals. If the price signals to DER investors, owners, and organizers are timely, accurate, and local, incentives will align with efficient DER investment, siting, and operating levels. By contrast, without accurate price signals, it will be much more difficult to make efficient decisions concerning these issues.<sup>30</sup>

The Smart Home Rate proposal<sup>31</sup> should further help accomplish the REV proceeding's goals of increased efficiency and reduced environmental harm, because it calls for pricing granularity with respect to not only the time of day but also the specific services required to serve a particular customer at a specific location. Accurate price signals – such as those described in the Smart Home Rate proposal – could help a customer revise his or her use of

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<sup>29</sup> Rather than setting a quantitative standard for satisfactory performance, Yardstick EIMs or Scorecards could compare performance measures across New York State utilities (or between utilities in New York State and those in other areas). For example, lags in processing DER connection applications could be measured in days (a quantitative measure) or could be ranked from best to worst among the utilities in the state (a yardstick measure).

<sup>30</sup> Accurate price signals include cost differences due to differences in demand, supply, and transmission conditions that often vary greatly by time and location. As a result, it would be extremely challenging, if not impossible, to develop a set of regulations that would take all of these differences into account and create outcomes similar to the operation of markets.

<sup>31</sup> Revenues White Paper at 101.

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.<sup>32</sup>

The Revenues White Paper also highlights the peak shaving reward program instituted by Baltimore Gas and Electric.<sup>33</sup> As we indicated in a comment to the Massachusetts Department of Public Utilities,<sup>34</sup> 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).<sup>35</sup> 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. Consumer education appears to have been quite effective in attracting participation among BG&E's residential customers.<sup>36</sup>

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<sup>32</sup> That is why a customer's price elasticity of demand can increase over a longer time frame, during which the customer can invest in technology that reduces power consumption during periods of high prices. Examples of these investments include distributed generation equipment, energy management software, improved home insulation, energy storage devices, and smart appliances.

<sup>33</sup> Revenues White Paper at 87.

<sup>34</sup> Comment of the Staff of the Federal Trade Commission Before the Commonwealth of Massachusetts Department of Public Utilities, Investigation by the Department of Public Utilities Upon Its Own Motion into Time Varying Rates, D.P.U. 14-04 (Mar. 10, 2014), at 11-12, 15, available at [https://www.ftc.gov/system/files/documents/advocacy\\_documents/ftc-staff-comment-massachusetts-department-public-utilities-regarding-its-investigation-time-varying/140318dpustaffcomment.pdf](https://www.ftc.gov/system/files/documents/advocacy_documents/ftc-staff-comment-massachusetts-department-public-utilities-regarding-its-investigation-time-varying/140318dpustaffcomment.pdf). The Department of Public Utilities subsequently agreed that customers should have a peak-time rebate pricing option. Commonwealth of Massachusetts, Department of Public Utilities, Order Adopting Policy Framework for Time Varying Rates at 2 (Nov. 5, 2014), available at <http://www.mass.gov/eea/docs/dpu/electric/grid-mod/d-p-u-14-04-c-final-order-11-5-2014.pdf>.

<sup>35</sup> Larger commercial and industrial customers are likelier to face dynamic pricing.

<sup>36</sup> The customer education and marketing programs for BG&E's Smart Energy Rewards program are described in (among other sources) Ruth Kiselewich (BG&E), *Successful Rollout of Dynamic Pricing: BGE's Smart Energy Rewards* (May 21, 2014), available at <http://www.demandresponsetownmeeting.com/wp-content/uploads/2012/03/Kiselewich-Ruth-5-DR.pdf>; and America Lesh (BG&E), *2014 Smart Grid Customer Education Symposium: Evolving from AMI to Dynamic Pricing Programs: How to Take the Customer with You on the Smart Grid Journey* (Apr. 28, 2014), available at <http://smartgridcustomereducation.com/presentations/SGCES-AmericaLesh-BGE.pdf>.

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.<sup>37</sup>

## **VI. Conclusion**

The FTC staff appreciates the opportunity to provide this reply comment. If you have any questions or comments, please contact John H. Seesel, Office of the General Counsel, at (202) 326-2702.

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<sup>37</sup> Revenues White Paper at 12, 103-04. In practice, the NY PSC has exempted small DER projects from standby rates, pending an improved rate design. For a discussion of pricing principles for standby service and descriptions of reformed standby charges used by utilities in some other states, *see* Graeme H. Miller, Clifford P. Haefke, and John J. Cuttica, *Interstate Power and Light (Subsidiary to Alliant Energy) Standby Rate Considerations* (Feb. 27, 2014), available at [http://midwestchptap.org/events/PDF/Interstate\\_Power\\_and\\_Light2014\\_Standby\\_Rate\\_Considerations.pdf](http://midwestchptap.org/events/PDF/Interstate_Power_and_Light2014_Standby_Rate_Considerations.pdf) (prepared for the Iowa Environmental Council and the Environmental Law & Policy Center by the U.S. Dep't of Energy, Midwest Combined Heat and Power Technical Assistance Partnerships).