

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on September 15, 2016

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair
Patricia L. Acampora
Gregg C. Sayre
Diane X. Burman

CASE 15-M-0501 - In the Matter of a Review of Utility Codes of
Conduct as Impacted by Reforming the Energy
Vision.

CASE 14-M-0101 - Proceeding on Motion of the Commission in
Regard to Reforming the Energy Vision.

ORDER SETTING STANDARDS FOR CODES OF CONDUCT

(Issued and Effective September 15, 2016)

BY THE COMMISSION:

INTRODUCTION

On February 26, 2015, the Commission issued an Order adopting a regulatory framework for its Reforming the Energy Vision (REV) initiative.¹ As part of the framework, the Commission adopted the Department of Public Service Staff (Staff) proposal that the current distribution electric utilities assume the role Distributed System Platform Provider (DSP). Additionally, the Commission determined that utility affiliates could own and operate Distributed Energy Resources

¹ Case 14-M-0101, Reforming the Energy Vision, Order Adopting Regulatory Policy Framework and Implementation Plan (issued February 26, 2015).

(DER) in the regulated utilities' operating territories², and utilities themselves could own DER in certain, limited, circumstances.³ Given the potential conflicts of interest, and to expand the opportunity for the receipt of comments on codes of conduct beyond that in the REV proceeding, the Commission instructed Staff to initiate a proceeding to "address and refine utility and affiliate codes of conduct."⁴⁵

After exploratory meetings on April 14, 2015 and May 19, 2015 with the Joint Utilities (Joint Utilities)⁶ and other market participants respectively, and the review of resulting comments, Staff, on April 5, 2016, filed its Guiding Principles for Revised Utility Codes of Conduct (Staff Report or the

² Id., pp. 70-71.

³ Utility ownership of DER is only allowed under the following four circumstances: 1) procurement of DER has been solicited, but competitive alternatives are inadequate or more costly than a traditional utility infrastructure; 2) a project consists of energy storage integrated into distribution system architecture; 3) the project is for low or moderate income residential customers where markets are not likely to satisfy the need; or 4) a project is being sponsored for demonstration purposes. (Track One Order pp. 68-70)

⁴ Id., pp. 71-72.

⁵ This process is intended to address changes to existing codes that are needed to reflect the addition of DER conflicts of interest. Other existing provisions of utilities codes of conduct should remain unchanged.

⁶ Central Hudson Gas & Electric Corporation ("Central Hudson"), Consolidated Edison Company of New York, Inc. ("Con Edison"), New York State Electric & Gas Corporation ("NYSEG"), Niagara Mohawk Power Corporation d/b/a National Grid ("Niagara Mohawk"), The Brooklyn Union Gas Company d/b/a National Grid NY ("Brooklyn Union Gas") and KeySpan Gas East Corporation d/b/a National Grid ("KeySpan Gas East") (collectively "National Grid"), Orange and Rockland Utilities, Inc. ("O&R"), and Rochester Gas and Electric Corporation ("RG&E")

Report) with the Secretary.⁷ The Staff Report explored various principles that may be needed in the revised codes of conduct to address concerns arising from utility or affiliate ownership of DER. The Secretary also issued a Notice⁸ scheduling a meeting with all interested parties on May 3, 2016, and inviting comments by June 6, 2016, on the Staff Report.

Having received and reviewed the comments, through this order the Commission adopts requirements for the elements needed in the utilities' codes of conduct and instructs the electric utilities to file conforming revisions.

NOTICE OF PROPOSED RULE MAKING

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rulemaking was published in the State Register on April 20, 2016 [SAPA No. 15-M-0501SP1]. Moreover, in a Notice Soliciting Comments and Scheduling Meeting, comments were solicited on April 5, 2016, with replies due June 6, 2016. The time for submission of comments pursuant to the SAPA Notice expired on June 4, 2016. Comments were received from seven parties and are summarized and addressed below.⁹

⁷ Case 15-M-0501 et al., REV - Codes of Conduct, Staff's Proposed Guiding Principles for Revised Utility Codes of Conduct (issued April 5, 2016) (Report).

⁸ Case 15-M-0501 et al., supra, Notice Soliciting Comments and Scheduling Meeting (issued April 5, 2016) (Notice).

⁹ Ms. Meghan Belaski-Ashe submitted comments opposing the use of nuclear power in New York State. However, since this material is not related to this proceeding's subject matter, the Commission does not address Ms. Belaski-Ashe's comments.

SUMMARY OF STAFF REPORT

The Staff Report included six principles to address concerns that result from utility or utility affiliate ownership of DER. The first principle addressed preferential treatment, specifically recognizing the risk that utilities could offer preferential treatment to their unregulated affiliates in managing the provision of DER. The second principle was aimed at ensuring that information was not inappropriately shared with affiliates, or withheld from other third parties. The third principle raised the issue of the relationship between employees engaged in traditional distribution planning and operations and those engaged in DER market administration or Platform Service Revenue activities (PSRs) and specifically questioned whether there should be functional separation of such employees. The fourth principle highlighted the need for a transparent and fair DER procurement process. The fifth principle asserted the need to have an independent party monitor the DER procurement selection process when an affiliate is involved in order to ensure a fair selection process. The last principle addressed the need for a dispute resolution mechanism to ensure compliance with utilities' codes of conduct and also to provide a means of addressing any non-compliance issues that arise.

COMMENTS

Advanced Energy Economy Institute (AEEI)¹⁰

AEEI notes that the investor-owned electric utilities already have codes of conduct, and makes the following

¹⁰ AEEI's comments were received as part of the earlier proceedings, but are addressed here because of their relevance.

recommendations to ensure the existing codes are suitable for REV.

First, AEEI suggests that the Commission ensure uniformity between utilities' codes of conduct by requiring each to contain a set of minimum standards that will ensure compliance with the priorities of REV. Second, AEEI suggest that, if utilities are allowed to offer competitive DER services, aspects of the codes of conduct must apply to interactions between the DSP and competitive provider parts of the utility. This is to ensure that other competitive service providers are not disadvantaged in the marketplace. Third, AEEI recommends that the Commission consolidate the language of the various existing codes of conduct to create a unified core of basic principles for REV implementation.¹¹

Advanced Energy Management Alliance (AEMA)

AEMA makes three recommendations. First it recommends that codes of conduct explicitly address the potential for cross-subsidization between utilities and affiliate companies. Second, AEMA requests Staff clarify that utilities will provide all parties equal access to customer and system information, and will not disclose third-party information. Finally, AEMA asserts that utilities should not be allowed to actively recruit

¹¹ AEEI identifies the relevant principles, for dealings with outside parties and intra-utility interactions, as: independent functioning, fairness, pricing and cost allocation, avoiding unresolvable market power conflicts and transparency.

customers into their own demand response programs where competitive demand response services exist¹².

Clean Coalition

The Clean Coalition generally supports the comments of AEEI. In addition, the Clean Coalition recommends that Staff's proposal of no preferential treatment or information sharing between utilities and third parties or affiliates be expanded to include parts of a utility that perform DSP functions and those offering competitive services. The Clean Coalition also suggests that utilities disclose pricing and costs allocations where they own and manage DER. Finally, the Clean Coalition recommends that the codes of conduct include: an acknowledgement of the Commission's authority to audit the utilities' operations, and resolve disputes with third parties.

Central Hudson Gas & Electric Corporation (Central Hudson)

Central Hudson supports the comments of the Joint Utilities (below), and notes that its current code of conduct already addresses the Report's concerns. Central Hudson also states that it would not offer competitive services without first petitioning the Commission for authorization to do so, except to provide solutions to ratepayer reliability and deliverability problems related to electric and gas distribution.

¹² The Commission notes that the recruiting of customers into utilities demand response programs is outside of the scope of this code of conduct proceeding and will not be addressed further.

Joint Utilities

The Joint Utilities generally agree with Staff's proposed principles, but offer the following observations. First, the Joint Utilities assert that their existing codes of conduct already address the majority of issues raised in the Report, so wide-scale modification is not required. Specifically, the Joint Utilities state that the existing codes of conduct contain provisions prohibiting preferential treatment of affiliates. Regarding the Report's recommendation prohibiting the sharing of third-party information with affiliates, the Joint Utilities note that the existing codes of conduct generally prohibit¹³ the release of proprietary information, but request a clarification. The Joint Utilities state that there are instances in which a third party might want its information distributed to other parties, and in such cases believes they should be allowed to share the information with affiliates at the same time the information is provided to other parties.

Regarding the proposal to require internal separations between DSP and DER functions, the Joint Utilities argue that such a separation would be unworkable since system planning (DSP functions) permeate all other aspects of the utilities' operations. Isolating DSP functions, it is claimed, would hinder the implementation of REV and require the utilities to effectively duplicate its workforce to ensure the two sections possess the necessary expertise. The Joint Utilities state that concerns over utilities favoring their internal resources are

¹³ The Joint Utilities stated that National Grid companies do not have such a provision, but could add one if needed.

unfounded given: other Commission proceedings¹⁴, the requirements for benefit cost analyses for projects¹⁵, and the Value of D proceeding.¹⁶

Regarding Staff's transparency proposal, the Joint Utilities believe existing code of conduct provisions (prohibitions against preferential treatment and misuse of proprietary information) adequately address the need for transparency. Regarding market power conflicts, the Joint Utilities accept the need for an independent monitor to ensure fairness, but believe it would be inappropriate to include a provision in the codes of conduct. Instead, they argue that it should be included in a Commission Order or guidance documents. Regarding dispute resolution provisions, the Joint Utilities state that most utilities already have such provisions, and those that don't could add one if needed.

Finally, the Joint Utilities state that should there be a conflict between an existing code of conduct and requirements that emerge in the REV proceedings, they will work with Staff to bring the codes into compliance.

NRG Energy, Inc. (NRG)

NRG urges the Commission to ensure any utility affiliated company does not receive preferential treatment, and is not allowed to use the utility's name to promote its services. NRG also comments that utilities should be barred from using customer data, not available to other parties, to

¹⁴ Case 14-M-0101, Reforming the Energy Vision, Order Adopting Distributed System Implementation Plan Guidance (issued April 20, 2016).

¹⁵ Case 14-M-0101, supra, Order Establishing the Benefit Cost Analysis Framework (issued January 21, 2016).

¹⁶ See Case 15-E-0751, Value of Distributed Energy Resources (commenced December 23, 2015).

develop and market services to ratepayers. Finally, NRG urges that utility employees working on competitive services should be segregated from those performing DSP functions.

Pace Energy and Climate Center (Pace)

Pace observes that the utilities' codes of conduct address many of the issues raised in the Report and suggest that the codes should be harmonized to ensure full coverage of issues. Pace suggests that the utilities annotate their codes to identify where Staff's concerns are addressed and submit the results, with supporting material, in this proceeding.

Specifically, Pace observes that not all codes fully address the prohibition against preferential treatment or the sharing of third parties' information and suggests the codes be harmonized to provide clarity. Pace suggests the present proceeding be kept open to allow for review of codes of conduct as the post-REV landscape develops.

Pace recommends against preemptively segregating utility employees along DSP and competitive lines since this may result in inefficiencies. Instead, Pace suggests that the market be allowed to develop and the issue revisited if problems emerge.

Regarding the solicitation of information by DER providers, Pace notes that the utilities have referred to material outside of their codes of conduct that address this issue and suggests that this material be provided to stakeholders for review.

Finally, Pace observes that the current language on dispute resolution in the various codes is generally adequate.

Taylor Biomass Energy, LLC (Taylor)

Taylor summarizes its work generating electricity from organic waste material and identifies issues it has with current State priorities in renewable resources. Regarding the utilities' codes of conduct, Taylor notes that, under the Commission's guidelines, utilities will be allowed to offer distributed energy resources in very limited circumstances. Given this, Taylor argues that the current codes of conduct are sufficient to ensure a level playing field until the REV marketplace fully develops.

STATUTORY AUTHORITY

Under Public Service Law (PSL) §65(1) electric utilities are required to provide safe and adequate service at just and reasonable prices. The Commission exercises general supervision over all electric utilities under PSL §66(1), and regulates the rates and tariff schedules charged by electric utilities under PSL §66(12).

DISCUSSION

Having reviewed the comments noted above, the Commission's evaluations and decisions on each of the issues set forth in the Staff Report are provided below. In addition, the Commission notes that this Order is focused on the changes to existing codes that are needed to reflect the addition of DER conflicts of interest. Utilities should not eliminate other basic provisions of their codes.

No preferential treatment

The Staff Report highlighted concerns that utilities could offer preferential treatment to their unregulated affiliates in managing the provision of DER. The Report

recommended that the codes state that the regulated utility will not provide preferential treatment, specifically with regards to interconnections and dispatch, to its affiliate.

Commenters generally agreed with this provision, however the Joint Utilities asserted that the existing codes already have language that prohibits preferential treatment of affiliates and, as such, no modification is necessary.

The Commission agrees that many existing codes already have language prohibiting preferential treatment of affiliates, as the Joint Utilities asserts. However, given the potential concerns highlighted by Staff, this prohibition needs to be explicit and clear. Therefore, the Commission directs utilities to include in their codes language which explicitly prohibits preferential treatment to affiliates regarding, but not limited to, interconnections and dispatch.

Sharing of Information

The Staff Report noted potential concerns regarding the sharing of information between regulated utilities and affiliates. Staff asserted that a situation could occur whereby information is inappropriately shared with affiliates, or where information is withheld from other market participants. To address these concerns, the Proposal recommended that (1) the codes clearly state that regulated utilities will provide equal access of customer and system information to all market participants and (2) that the utilities will not disclose to affiliates information that was provided by third parties.

The Joint Utilities and AEMA generally agreed with Staff's Proposal, however both recommended modifications to the language. The Joint Utilities recommended that the second point be modified to state that a utility may not disclose to an affiliate, third party information that is not disclosed to all

other parties on an equal and contemporaneous basis. AEMA recommended that the first point be modified to state that regulated utilities will provide equal access of information to all market participants, including affiliates, and that the second point be modified to state that regulated utility will not disclose information provided by other third parties to utility affiliates or any other third party provider.

The Clean Coalition recommended that employees within utility departments that manage competitive services be required to sign non-disclose agreements (NDAs) to prevent information from being shared outside of the department. The Clean Coalition further stated that utilities must ensure that all employees understand that competitive information is confidential to the department receiving that information.

The Commission agrees with AEMA's modification to the first point in the Staff Report as the additional language requiring regulated utilities to provide equal access of information to all market participants, including affiliates clarifies the intention of the Report. Regarding the second point, the Commission agrees with the modifications proposed by the Joint Utilities. Situations could arise where it is appropriate or necessary to share third party customer information, however this information should be made available to all parties contemporaneously and only with the consent of the third party. The Commission, therefore, directs utilities to conform their codes of conduct to include the points discussed above. The Commission disagrees with the Clean Coalition's recommendation that employees sign NDAs. Relevant agreements are between the utilities and third parties and, as such, there is no need for additional levels of liability related to individual employees. However, the Commission agrees with the Clean Coalition that employees must understand the

nature of, and requirements regarding, confidential information. Further discussion on this area is included in the "Training" section below.

Independent Function

In the Report, Staff noted that utility distribution employees could have information that should not be shared with regulated utility employees who work in DER procurement or PSRs. The Report raised the question of whether or not there should be functional separation of employees within these roles. The Report recognized that at the early stage of REV, it is difficult to determine the exact nature of these roles and the extent to which there could be potential conflict, however initial restrictions should be considered. Staff believes, however, that the Commission must ensure that the developing markets are not compromised by collaboration between these two groups.

The comments received ranged from insistence that the employee groups be separated (NRG), to the belief that current safeguards are adequate (Central Hudson). Between those extremes, parties are concerned the markets are not sufficiently developed to require new rules and that attempts to draft such rules might create significant inefficiencies.

In the past, functional separation was primarily a concern when an entity owned both generation and transmission assets where the transmission owner can take action to favor its own generation assets over other competitive generators. To address this concern, the Commission required the divestiture of generation from transmission and distribution ownership. Today, if a utility were to own DER, the same concern could develop, where the distribution platform provider can favor its own DERs over other competing DERs not owned by the utility; however, as

described above we have only allowed direct utility ownership of DER in very limited circumstances. Hence it is not essential to impose functional separation to address utility DER ownership at this time.

In addition, while participants are entitled to a market that is free from favoritism, the Commission does not believe at this time that, as NRG proposes, it is necessary to erect a wall between traditional planning and operations and the market administration function of the utilities. First, it is contrary to the basic principles that guide the REV process. REV is predicated on the integration of multiple parties into the State's electric infrastructure to increase efficiencies. Requiring the electric utilities to separate their traditional planning and operating functions from the DSP market functions could prevent efficiencies from developing.

Second, given the nascent state of the utilities' role as DSP market administrator, it is possible that the same employees are performing traditional utility planning and operations as well as DSP market functions in order to ensure that ratepayers benefit from the optimal selection of traditional and DER solutions to meet system planning needs. Requiring the hiring of additional staff to separate the functions would increase costs and potentially impede market development. This concern may fade as the REV marketplace expands and utility staff grows accordingly, but at this time the Commission believes that the need for additional employees and the potential for excess costs and inefficiency are legitimate concerns.

Third, in the Ratemaking and Utility Revenue Model Policy Framework Order (Track 2 Order) in the REV initiative, the Commission set forth criteria and a process for approving

PSRs, including the filing of tariffs and demonstration of when a utility can participate in offering competitive services.¹⁷

The Joint Utilities' current codes of conduct include provisions against collusion between utilities and competitive affiliates. However, given the possibility that different internal departments may now potentially have similar conflicts of interest, new safeguards are required.

For the reasons noted above, the Commission is not requiring functional separation of distribution employees and employees who work in DER procurement or PSR activities at this time. This may be reconsidered as the REV markets evolve. However, the Commission does recognize that there are concerns that information could be inappropriately shared amongst these groups. As such, the Commission directs utilities to develop policies and procedures that clearly outline what information is, or is not, to be shared. Additionally, employees should receive training on these procedures. Such training is included in the "Training" section below.

Transparency

The Staff Report noted that, with regard to the dissemination of information to DER providers, transparency is required to avoid impropriety and the misuse of inside information or the appearance of such transgressions. The Report stated that competitive bidding should be considered to minimize any potential for, or appearance of, the misuse of any inside information.

The Joint Utilities note that the misuse of information is already covered in other sections of the codes of

¹⁷ Case 14-M-0101, supra, Order Adopting a Ratemaking and Utility Revenue Model Policy Framework, pages 48-50 (issued May 19, 2016).

conduct. Clean Coalition urges the Commission to direct the utilities to make pricing and cost allocation data regarding affiliate or competitive services projects publicly available, thereby ensuring that project costs are not disguised.

The Commission notes that making cost allocation data regarding affiliates or competitive service projects publicly available raises confidentiality concerns. Cost allocations, however, are regularly considered in the context of rate case audits and can be reviewed by parties to those cases subject to disclosure agreements. We address cross subsidizations further in a separate section below.

The Commission, however, agrees with Staff that transparency is essential to avoid even the appearance of impropriety. While the misuse of information is already covered by utility codes of conduct, as the Joint Utilities assert, the directive to use open DER procurement processes, e.g., competitive bidding, is not. Although the DER marketplace may evolve in unforeseen ways in the future, there is an immediate need to ensure transparency. Therefore, the Commission directs the utilities to use competitive bidding or standard offers for DER procurement until other acceptable pricing methods are available.¹⁸ Staff will continue to monitor the regulated utilities in DER procurement to ensure fairness and transparency.

Avoiding market power conflict

The Staff Report highlighted the importance of fairness in procurement. Staff asserted that if a utility procurement involves an affiliate, an independent party must

¹⁸ Utilities are required to use competitive bidding, subject to the individual companies' existing threshold requirements for traditional capital expenditures.

monitor the selection process to ensure that the selection is unbiased.

The Joint Utilities accepted Staff's recommendation that an independent monitor be used if a utility affiliate participates in the solicitation, but argued that this requirement should be included in the Commission Order regarding the DER procurement process and not in the codes of conduct. NRG argued that an independent party should not just monitor the selection process, but should evaluate and select winning bids.

The Commission agrees with Staff that the use of an independent party to monitor the process is an important requirement when a utility affiliate is involved in the bidding process. In recent procurements of DER by the regulated utilities, the use of an independent monitor to ensure unbiased selection has been a best practice¹⁹. As the codes of conduct are designed to address relationships between a utility and its affiliates, the Commission rejects the Joint Utilities assertion that the use of an independent monitor is not appropriate for this proceeding. The Commission disagrees with NRG that an independent party should select the winning bids as it is ultimately the utility's responsibility to safely and reliably integrate a solution into the system. To ensure fairness, the Commission directs the utilities to use an independent party to monitor the DER procurement selection process when competitive bidding is required and if an affiliate is participating in the bid process.

¹⁹ 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 2014).

Dispute Resolution

The Staff Report stated that a dispute resolution mechanism was needed to ensure compliance with utilities' codes of conduct and also to provide a means of addressing any non-compliance issues that arise. The Report proposed that such disputes should be addressed using the protocols developed in Case 15-M-0180 (DER Oversight proceeding).²⁰

In its comments, Pace observed that the existing dispute resolution mechanisms appear adequate. The Clean Coalition recommended that the Commission, in addition to the efforts underway in the DER Oversight proceeding, clearly provide for oversight and include guidance on procedures to filing complaints in this proceeding. The Joint Utilities, meanwhile, argued that the protocols developed in the DER Oversight proceeding are not appropriate or required for the codes of conduct because complaint procedures currently exist to address potential affiliate concerns.

Disagreements can occur under any regulatory framework and a means of resolving them is a necessary feature of any market. While the existing codes of conduct provide procedures to handle parties' complaints, updates are needed for the new markets and some of the existing models are better than others. The Commission considers Central Hudson's²¹ dispute resolution mechanism to be a model for the other utilities to consider. Central Hudson commits to responding in writing to a party's complaint within a reasonable time and meeting with the complainant if needed. If such talks are not successful, the

²⁰ Case 15-M-0180, Distributed Energy Resource Providers - Oversight (commenced March 27, 2015).

²¹ Other utilities, such as NYSEG, provide for similar terms. Central Hudson is simply used as a model.

parties would turn to the Commission to resolve the conflict.²² Such a framework allows a complainant to choose his or her path for resolution while ensuring ultimate Commission review of any unresolved issue. Utilities that do not now use such a model are directed to adopt such terms in their revised codes of conduct. Additionally, utilities are directed to post their dispute resolution procedures on their website to ensure all potential parties have access to the guidelines and are aware of the resolution process.

Affiliate Definitions

The Commission notes that existing codes of conduct include a definition of the term "affiliate" and, as such, requirements of the codes only apply to entities that fall under that definition. Many of these codes were created after the deregulation of supply and therefore the codes were primarily aimed at ensuring appropriate relationships between the utility and its ESCO affiliates. Today, we have lightly regulated New York and FERC regulated transmission and generation affiliates, as well as other competitive affiliates. Given the change in the nature of the term "affiliate" over time, and the expected evolution in the REV markets, utilities are directed to develop and propose a joint definition of the term "affiliate". This definition should be broad enough to cover all affiliates and should be consistent across all utilities.

Consistency

There are significant differences among the various utility codes of conduct, with some being much more robust than others. Pace repeatedly asserted that there should be

²² The complainant is free to bring the dispute to the Commission without first contacting Central Hudson.

consistency in the codes. Additionally, Central Hudson noted that it would work with the Joint Utilities and Staff to amend its codes of conduct to offer consistent guidance where appropriate or necessary.

Differences in corporate structures or utility markets make boilerplate codes of conduct impractical. However, the Commission agrees that there should be consistency among the codes where practical and useful. Such consistency ensures fairness to various participants across New York State. The Commission therefore directs utilities to work together to standardize sections of the codes where appropriate. The utilities should file these standardized sections with the Commission for review with the revised codes of conduct. For each area not standardized, the filing should also include an explanation as to why harmonization was not appropriate.

Cross Subsidization

AEMA stated that the codes should explicitly address affiliate costs. Specifically, that utility affiliates should not be cross subsidized by the regulated utility. Public Service Law (PSL) §65(1) states that utility costs must be reasonable, which the Commission interprets to mean, among other things, a prohibition on cross subsidization of affiliates. Additionally, this is an area that is audited in rate proceedings. However, as cross subsidization is an area of concern and potential risk, the Commission agrees with AEMA and directs utilities to include in their codes language that explicitly prohibits such cross subsidization. The existing codes require charges for goods or services to be allocated to affiliates on a fully loaded cost basis. Additionally, some codes explicitly require goods to be transferred to affiliates at the higher of book or market value and purchased from

affiliates at the lower of cost or market value. Each utility should clarify its code accordingly. Furthermore, the books, records and accounting procedures maintained by utilities should demonstrate strict compliance with Commission approved codes of conduct.

Training

As discussed above, training is an important tool to ensure that employees are informed of the requirements of the codes of conduct. The Commission, therefore, directs utilities to jointly develop procedures, guidelines and training materials that clearly illustrate what information should and should not be shared, both with outside parties and with employees in other operating departments. These items should be consistent across all utilities and should be filed with the Commission for review with the revised codes of conduct. Employees should be required to complete annual training on the utilities' code of conduct and information sharing should be included in all such training. Additionally, employees should be required to attest to their completion of such training on an annual basis.

Future Revisions

Many parties raised concerns about how any future revisions to the codes would be addressed. Taylor Biomass urged the Commission to delay adoption of any code revisions until the market had time to fully develop under REV. PACE recommends that this proceeding remain open as the REV market develops. The Joint Utilities stated that if circumstances arise where elements of the code are inconsistent with REV in the future, the utilities will work with the Commission to amend the rules and address any such inconsistencies.

The Commission disagrees with Taylor Biomass that adoption of updated codes should be delayed. Although REV is not yet fully developed, the REV markets have already begun to advance and, as discussed throughout this Order, safeguards are needed to address any potential conflicts of interest. We will, therefore, require the Joint Utilities to file revised codes of conduct by December 31, 2016. The Commission does agree with PACE and the Joint Utilities that there needs to be a process to amend and update the codes as the markets continue to mature. The Commission directs the Joint Utilities to include code modifications with their biannual Distributed System Implementation Plan (DSIP) filings. This will give Staff, the utilities and other parties an opportunity to review the codes at regular intervals and concurrent with the REV development.

The Commission orders:

1. The Commission adopts the following requirements for the electric utilities' codes of conduct: inclusion of language explicitly prohibiting preferential treatment to affiliates regarding, but not limited to, interconnections and dispatch; equal access of information to all market participants, including affiliates; when authorized to do so, third-party information shall be shared with all parties equally contemporaneously; the nature of and requirements for confidential information must clear to employees; what information may and may not be shared must be made clear; competitive bidding or standard offers for DER procurement must be used until the Commission determines otherwise; when competitive bidding is used for DER procurement, an independent monitor shall be used; dispute resolution procedures shall include written responses to complainants, meetings between the utility and complainants, and the right of complainants to

request resolution by the Commission; dispute resolution procedures shall be posted on the utilities' websites; cross-subsidization between utilities and unregulated affiliates shall be prohibited; goods shall be transferred to affiliates at the higher of book or market value and purchased from affiliates at the lower of cost or market value; and employees shall receive annual training in the requirements of the codes of conduct, which shall include rules on information sharing, and attest to the completion of such training.

2. Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation (d/b/a National Grid), Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation shall file revised codes of conduct, including a red-line version of the current codes showing the changes made and a narrative explaining how the code complies with the Commission's requirements, with the Secretary to the Commission by December 31, 2016 consistent with and as described in the body of this Order.

3. Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation (d/b/a National Grid), Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation shall jointly develop procedures, guidelines and training material to ensure employee compliance with the new codes of conduct.

4. The material developed in Ordering Clause 3 shall be filed with the Secretary to the Commission within six months of the issuance of this Order.

5. In the Secretary's sole discretion, the deadlines set forth in this order may be extended. Any request for an extension must be in writing, must include a justification for the extension, and must be filed at least one day prior to the affected deadline.

6. This proceeding is continued.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS
Secretary