



September 25, 2015

VIA ELECTRONIC FILING

Hon. Kathleen H. Burgess
Secretary to the Commission
New York State Public Service Commission
Empire State Plaza, Agency Building 3
Albany, New York 12223-1350

Re: Case 15-M-0180 – In the Matter of Regulation and Oversight of Distributed Energy Resource Providers and Products

Dear Secretary Burgess:

The Advanced Energy Economy Institute (AEEI), on behalf of Advanced Energy Economy (AEE), the Alliance for Clean Energy New York (ACE NY), the New England Clean Energy Council, and their joint and respective member companies, submit for filing these Initial Comments to the *Staff Proposal* In the Matter of Regulation and Oversight of Distributed Energy Resource Providers and Products.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Ryan Katofsky", with a stylized flourish at the end.

Ryan Katofsky
Senior Director, Industry Analysis

Initial Comments on Staff Proposal: In the Matter of Regulation and Oversight of Distributed Energy Resource Providers and Products (Case 15-M-0180)

**Advanced Energy Economy Institute
Alliance for Clean Energy New York
New England Clean Energy Council**

Introduction

The mission of Advanced Energy Economy Institute (AEEI), the charitable and educational organization affiliated with Advanced Energy Economy (AEE), is to raise awareness of the public benefits and opportunities of advanced energy. As such, AEEI applauds the New York Commission for opening this proceeding on Reforming the Energy Vision (REV), which seeks to unlock the value of advanced energy so as to meet important state policy objectives and empower customers to make informed choices on energy use, for their own benefit and to help meet these policy objectives.

In order to participate generally in the REV proceeding and respond specifically to the Staff Proposal on Regulation and Oversight of Distributed Energy Resource Providers and Products (“DER Oversight Proposal”), issued on July 28, 2015, AEEI is working with AEE and two of its state/regional partners, the Alliance for Clean Energy New York (ACE NY) and the New England Clean Energy Council (NECEC), and the three organizations’ joint and respective member companies to craft the Initial Comments below. These organizations and companies are referred to collectively as the “advanced energy community,” “advanced energy companies,” “we,” or “our.”

The advanced energy community strongly supports the efforts of the Commission in this proceeding, and is committed to playing its part to create a high-performing electricity system in New York State. To that end, the advanced energy community looks forward to its continued involvement in this proceeding, and in assisting the Commission in this endeavor. Below are our Initial Comments on the DER Oversight Proposal.

Comment Highlights

- The advanced energy community is supportive of the need to develop consumer confidence in the REV marketplace, and understands that this is a key reason the Commission intends to exercise some degree of oversight of DER providers. Nevertheless, we also believe that Staff has proposed regulations that go beyond what the Commission intended with its Track 1 Order. The UBP-DERS is modeled on the UBP for ESCOs. But ESCOs offer, essentially, a single product. DER providers offer a wide range of products and services that could make application of a similar set of requirements complex and unworkable. The Commission will need to be careful to not make compliance with the UBP-DERS too complicated, burdensome or expensive; otherwise this could stifle innovation, deny consumers the benefits of lower cost energy services and products, and potentially lead DER providers to put their efforts into other markets. Especially since the Commission is seeking to spur innovation and new models for energy product and service delivery, market entry needs to be easy, not complicated or overly burdensome, so that the rewards justify the risks to market participants.
- The advanced energy community believes the DER Oversight Proposal should go further in response to the Commission’s mandate to clearly define categories of DER providers and services not subject to UBP-DERS under PSL jurisdiction. As a threshold matter, the Commission noted in the Track 1 Order the importance of avoiding duplicative and overlapping regulation by providing clear criteria of applicability, stating that DER providers should be subject to oversight only to the extent they “furnish” electricity. The DER Oversight Proposal should set forth in detail the distinctions between those services that are and are not within this definition.
- Regarding oversight when DER services are sold into DSP markets, Staff proposes expanding the scope of what the Commission envisioned to include existing utility DER programs (e.g., existing demand response programs, BQDM, Community DG), including for mass-market customers. Yet the Commission wrote in the Track 1 Order that their jurisdiction over DER providers would apply “once DSP market tools have been developed” (see Order at page 105). Absent any compelling reason to subject DER providers participating in these existing programs to the UBP-DERS, the advanced energy community does not support this recommendation.
- Furthermore, the following types of DER providers should not be subject to oversight via UBP-DERS: Those that interact directly with the NY ISO, since they must already adhere

to a large number of tariffs, manuals, and rules and incur stiff penalties for non-compliance; DER providers that supply end-use customers with distributed generation products and services that use net metering, as this does not meet the criterion of providing DER services into DSP markets; contracted agents of the utilities and NYSERDA contractors, who are already subject to oversight under these relationships.

- For the most part, the proposed UBP-DERS themselves are not overly prescriptive and appears to balance the need to protect customers with the need to give the market the ability to evolve, subject to addressing the threshold applicability questions. Nevertheless, it will be important that the final UBP-DERS not get too far ahead of, and potentially impact, market development, given that so much of REV implementation is still incomplete, e.g., the format and offerings of the Digital Marketplace. Regulations should be regarded as provisional and subject to continual updating consistent with the direction of the new REV marketplace.
- It should be noted that several REV demonstration projects involve connecting end use customers and DER providers. The implementation of these projects is underway and should not be subject to the proposed UBP-DERS, but rather the development of the UBP-DERS should be informed by the activities in these demonstrations and amended as the markets and issues develop.
- The advanced energy community agrees that standardized contract provisions should be encouraged and developed for delivery of some products or services. However, the DER Oversight Proposal should clarify that such standardized contract language will be available and approved in advance for use in contracts with DER providers to facilitate efficient transactions, but will not be mandatory.
- The Commission needs to provide greater clarity on definitions, e.g., “digital marketplace” vs. “customer portal”. These terms may mean different things to different parties and this confusion will serve to inhibit participation. Moreover, if the digital marketplace is meant to broadly define all transactions related to REV, this would mean that, based on Staff’s proposal, many DER providers could be unnecessarily subject to Commission oversight.

Detailed Comments on the Narrative

Compliance with the PSL and HEFPA

The advanced energy community urges the Commission to proceed cautiously with Staff's interpretation of the applicability of the Public Service Law (PSL) and the Home Energy Fair Practices Act (HEFPA). Our review of the Track 1 Order (see the Order at pages 102-105) strongly suggests that the Commission intended for DER provider oversight to be more limited than what Staff is proposing here.

First and foremost, the applicability of the PSL and HEFPA should only be considered if one or both of the two criteria set forth in the Track 1 Order are met for Commission oversight of DER providers (see section below on "Applicability of UBP-DERS"). Assuming that is the case, then careful consideration should be given as to whether it is reasonable to subject a particular DER provider to compliance with PSL and HEFPA. Staff does not appear to distinguish between different types of DER providers, yet DER providers include a wide range of companies and business models and certainly some would seem to fall outside the PSL and HEFPA, based on the definitions provided by Staff in the DER Oversight proposal. For example, a DER provider offering energy efficiency products and services does not appear to be covered by PSL sec. 53.¹ Moreover, there does not appear to be the need to subject DER providers acting as contracted agents of utilities to compliance with the PSL or HEFPA as their relationship with the utility already subjects them to compliance with rules that govern the conduct of utilities.

With specific regard to HEFPA, Staff proposes that "...relationships between residential customers and DERS will be subject to the complaint resolution process provided for in HEFPA..." This criterion seems overly broad and is proposed without apparent consideration of existing consumer protection laws, regulations and complaint resolution processes that these DER providers are already subject to, either by virtue of their participation in other New York State energy programs or by simply doing business in New York State. In addition, it is unclear that Sec. 11.2 of the HEFPA would apply to all DER providers. Unless Staff can demonstrate (i) clear jurisdictional authority, and (ii) that existing consumer protections and processes are inadequate, the Commission should not adopt Staff's recommended UBP-DERS to apply to all DER providers.

¹ For purposes of this article, a reference to a gas corporation, an electric corporation, a utility company, or a utility corporation shall include, but is not limited to, any entity that, in any manner, sells or facilitates the sale or furnishing of gas or electricity to residential customers.

Applicability of UBP-DERS

As with the foregoing discussion of the applicability of PSL and HEFPA, the advanced energy community is similarly concerned with the broad approach Staff is taking with the applicability of its proposed UBP-DERS requirements, and believes that it exceeds the scope of what the Commission intended with its Track 1 Order. The advanced energy community suggests that if the UBP-DERS is focused on business-to-consumer issues, as the Track 1 Order suggests (see Order at page 105), it should not address basic consumer protections (i.e., issues not unique to the DER market), which are already covered in New York State more generally. Instead the UBP-DERS should focus on the basic principles contained in the Track 1 Order and be limited to issues directly related to the specific concerns raised by the Commission in the Track 1 Order.

With regards to the first criterion outlined in the Track 1 Order (when DER providers acquire customer data by any means established under the Commission's authority), although Staff noted that this criterion does not yet apply, there is substantial discussion in the DER Oversight Proposal regarding the Digital Marketplace, but insufficient discussion of the relationship between participation in the Digital Marketplace and how this criterion would be applied. For example, would a company selling smart thermostats (or retailers of similar products) via the Digital Marketplace be subject to UBP-DERS? This would seem excessive. There may be many transactions facilitated by the Digital Marketplace that would likewise appear to fall outside the scope of the Commission's intent when it issued the Track 1 Order. More generally, would participation in the Digital Marketplace be the same as using customer data from the DSP or selling services to the DSP? We believe the two are not the same and ask that Staff provide clarification on this. The Commission may indeed provide some clarity on this topic after review of comments and a decision in the parallel proceeding for the Staff White Paper on Ratemaking and Utility Business Models. Perhaps it would be prudent to delay adoption of DER oversight rules until after a decision in Track 2 on market structure.

Regarding the second criterion (when DER services are sold into DSP markets), Staff proposes expanding the scope of what the Commission envisioned to include existing utility DER programs (e.g., existing demand response programs, BQDM, Community DG), including for mass-market customers. Absent any compelling reason to subject DER providers participating in these existing programs to the UBP-DERS, the advanced energy community does not support this recommendation. The Commission wrote in the Track 1 Order that their jurisdiction over DER providers would apply "once DSP market tools have been developed" (see p.105). This does not appear to apply to existing programs or programs guided by tariffs. Rather than "animate markets", adding these requirements to existing programs is likely to have the opposite effect.

The Track 1 Order stated that jurisdiction over DER providers for purposes of imposing oversight would not apply to companies to the extent they do not “furnish electricity.” The Commission made clear that while many DER providers would be subject to this standard, “the Commission will not regulate all transactions involving DER providers,” noting that “[a] clear criterion of applicability is needed, in order to avoid an overly broad and unworkable extension of regulatory authority over private transactions.” (Order at page 102). However, the Staff DER Oversight Proposal appears to adopt a blanket approach, sweeping all DER providers and services into the scope of jurisdiction without providing such criteria as contemplated by the Commission.

Consistent with the Commission’s objectives of minimizing barriers to entry and avoiding overlapping regulatory regimes, the DER Oversight Proposal should be modified to add clear, bright line definitions for determining which DER providers and services will be subject to the UBP-DERS - on the basis that they are substantially engaged in “furnishing electricity” - and which DER providers and services are not within the jurisdiction of the Commission and therefore will not be subject to UBP-DERS.

Making this distinction is vitally important to the success of REV. Many types of DER providers will not be furnishing electricity or providing core DSP services. Those DER providers already are subject to regulation under existing consumer protection laws. Imposing an additional layer of onerous regulatory requirements would result in barriers to entry and needless economic and administrative burdens that would impede market participation by third party providers. Overregulation also could lead to anti-competitive and market-stifling activities by incumbent utilities, who could be tempted to use alleged UBP-DERS non-compliance in seeking competitive advantage against DER providers where the utilities are providing similar services.² The Commission’s Track 1 Order included the following points among its objectives (see Track 1 Order at page 45).

- Minimum barriers to entry
- Flexibility, diversity of choice, and innovation
- Consistency with regulatory objectives and requirements – function within Public Service Law jurisdiction to the maximum extent possible in order to avoid overlapping regulatory regimes

² The nature of services to be offered by regulated utilities is the subject of the Track 2 White Paper, where Staff clearly contemplates some form of regulated utility involvement in providing competitive services. The advanced energy community will be providing extensive comments on this issue in its Initial Comments on the Track 2 White Paper.

The Commission noted that (see Track 1 Order at pages 102-105): “DER providers are already subject to a wide array of federal, state, and local regulations and conditions on participation in state incentive programs and wholesale markets, and duplicating existing protections could be highly inefficient and financially burdensome.” Addressing the need to provide clarity of UBP-DERS applicability, the Commission further stated that:

Some degree of supervision over DER providers will be necessary, in order to ensure both consumer protection and fair competition... As defined in PSL § 2(12), the term “electric plant” includes “all real estate, fixtures and personal property operated, owned, used or to be used for or in connection with or to facilitate the generation, transmission, distribution, sale or furnishing of electricity for light, heat or power . . .” As a result, when DER providers “furnish” electricity or “facilitate” the furnishing of electricity by providing services to DSP markets or systems, their facilities and property devoted to that task constitute electric plant, while when they do not “furnish” electricity, their facilities and property are not electric plant... DER providers are electric corporations subject to the jurisdiction of the Commission under Article 1 of the Public Service Law to the extent they “furnish” electricity.

Establishing consumer protection rules for DER providers raises three sets of questions: how to distinguish those services that are subject to Commission supervision from those that are not; how to avoid unnecessary overlap with other consumer protection regimes; and by what mechanism the supervision will be exercised.

The definition of DER services is potentially broad enough to cover a wide range of home energy services that have not traditionally been subject to Commission oversight. This includes, for example, solar installers, home performance contractors, and building management system operators. A clear criterion of applicability is needed, in order to avoid an overly broad and unworkable extension of regulatory authority over private transactions. We are also mindful of the risk of duplicative or overlapping regulation and oversight, and will restrict our oversight to avoid such risks. In the case of ESCOs, there is a clear existing criterion: a customer purchases energy from the ESCO. In the case of DER providers, there will be two distinct criteria, once DSP market tools have been developed, used to establish when a service is the “furnishing” of electricity subject to jurisdiction.

In other words, DER providers should only be subject to oversight under PSL jurisdiction where the Commission has found that their services are furnishing electricity, or contributing materially to core DSP functions that are furnishing electricity.

The Commission observed that: “Establishing consumer protection rules for DER providers raises three sets of questions: how to distinguish those services that are subject to Commission supervision from those that are not; how to avoid unnecessary overlap with other consumer protection regimes; and by what mechanism the supervision will be exercised.”

The DER Oversight Proposal does not sufficiently address the Commission’s mandate to address these limitations on jurisdiction or on avoiding unnecessary overlap. Instead, it appears to reach the conclusion that all DER services with any connection to utility DER programs would be covered, apparently including all “products and services sold to mass market customers” and all energy efficiency and demand response services associated with DSP utility programs (DER Oversight Proposal at pages 4-5). We respectfully submit that the final DER Oversight Proposal should make clear, as the Commission intended, that DER providers providing services not directly relating to actually furnishing electricity are not subject to UBP-DERS under PSL jurisdiction.

The applicability conditions set out by Staff create a significant challenge for overseeing DER providers. The Commission will need to determine which DER providers furnish electricity and which ones do not, and will necessarily impose different levels of oversight based on those determinations. Regulation over this emerging market will become fractured, complex, and difficult to navigate. Instead, the Track 1 Order presents a simpler way forward. The two criteria provided suggest that the Commission was focused on two specific types of interactions between the DSPs and DER providers rather than the nature of the DER providers involved. These contractual relationships between DSPs and DER providers – where DER providers receive customer information or sell DER products into DSP markets – can function as both the criteria for applicability of the UBP-DERS and the means by which the Commission can exercise oversight over DER providers. As utilities and DSPs fall under the jurisdiction of the Commission, the Commission can set conditions for their contractual relationships with DER providers, thereby imposing conditions on and exercising oversight over specific activities of DER providers without having to find jurisdictional grounds to cover the diverse array of DER products and services by default, for which existing PSL may not be able to accomplish.

For situations where DER providers offer services to the DSP not already covered by tariff provisions, the Commission should focus on oversight of the contract and contract terms, and not the DER providers themselves. The Commission should ensure that the contract language is fair, non-discriminatory, and does not place onerous requirements on DER providers. Contracts between DSPs and DER providers should contain standardized language, as the resources offered by DER providers are likely to be highly uniform (e.g., commodity energy, capacity, and ancillary services defined in specific quantities). Terms that establish the eligibility of DER providers should be brief, straightforward, and uniform for all companies so that they do not pose a barrier to entry. Consolidated Edison’s Proposed Aggregator Eligibility Requirements in case 13-E-0573 provides a good example that could be modified for other forms of DER.

As the DSP will rely on resources offered by DER providers, the DSP should have the ability to set the terms of delivery for those resources in its contracts with DER providers, including the imposition

of penalties if those resources are not provided. Some resources could be offered on a voluntary basis by DER providers in response to market prices, and the provision of others could be obligated by contracts with the DSP, for example, in response to a DSP solicitation. Companies that provide resources voluntarily would incur no penalty if the resources were not provided, while a contract with the DSP would determine the penalties a company would pay if it failed to meet its obligations. We would expect that voluntary and obligated resources would have different values to the DSP and therefore different prices. This is analogous to how resources are procured in several Regional Transmission Organizations today.

Customer protections, such as data security, privacy, and marketing practices, should be written into contracts between DER providers and the DSP based on standards set by the Commission. The DER provider would be required to adhere to these provisions in order to conduct business with the DSP. However, as noted above, these types of provisions in these contracts should not duplicate or conflict with the significant number of existing consumer protections in federal and state laws that DER providers already must follow.

DER providers that interact directly with the NY ISO should not be subject to additional requirements or Commission oversight. Companies that participate in ISO markets must already adhere to a large number of tariffs, manuals, and rules and incur stiff penalties for non-compliance. Adding on to what are already substantial requirements risks duplicating these requirements and increasing compliance costs without providing additional benefits.

DER providers that supply end-use customers with distributed generation products and services that use net metering should not be subject to UBP-DERS, as this application does not satisfy the second criterion. This application is well established and we see no reason to subject this business model to additional oversight. Beyond New York, net metering is available in 43 other states, and we are not aware of any state that has imposed or is contemplating DER provider regulation by virtue of their provision of products and services used in combination with net metering.

With regard to the applicability of UBP-DERS to contracted agents of the utilities and to NYSERDA contractors, this seems unnecessary and duplicative of existing requirements. Many DER providers in New York, particularly those delivering energy efficiency and demand response products and services, are working as agents of the utility. This business model is business-to-business-to-customer (B2B2C), where the DER provider reaches the customer through a contractual arrangement with the utility, with the product or service being designed, approved and usually branded in the name of the utility. The Commission today effectively oversees these DER providers, as they must comply with existing rules to establish their eligibility to contract with the utility. This is a distinct business model from a direct business to consumer model (B2C).

Detailed Comments on the Proposed UBP-DERS

The advanced energy community offers here comments on selected elements of the DER Oversight Proposal.

Code of Conduct

With regards to the application requirements, the proposal again uses too broad of a brush to require “DERS to obtain a finding of eligibility from DPS staff.” Adding another regulatory layer to development of a robust, innovative market does not seem to make sense for all types of DER. We would point out that currently, many retailers sell what could be considered DER in New York. For example, consumers can go to any home improvement or hardware store today and purchase LED lighting, smart thermostats, or energy efficient appliances. Would implementation of the UBP-DERS now require every outlet to obtain approval by the DPS? It also appears that Staff is reaching to extend their jurisdiction by requiring all DER suppliers to agree to oversight as part of the approval.

Staff also asks for comments on market-based revenues related to DSP markets and DER providers. We will be providing extensive comments on that issue in the primary proceeding for 14-M-0101, in response to the Track 2 Staff White Paper on Ratemaking and Utility Business Models.

Requirements Concerning Business-to-Consumer Issues

With regard to customer agreements, the advanced energy community agrees that standardized contract language can be helpful if used appropriately and selectively, but we note that Staff has left this issue very open-ended in their proposal. Nevertheless, certain standardization can be helpful for customer acceptance, e.g., certain notice requirements, but such standardization should not create rigidity in the market, especially given the wide range of DER products and services available or contemplated. Similarly, given the rapid pace of change in the DER industry, DER providers should not be hampered by the lag inherent in the regulatory review of standardized contracts. In short, DER providers should not have to fit their products to the contracts.

Standardized contracts or contract language should not be applicable to large C&I customers, who generally negotiate their own contracts and which therefore are not amenable to rigid standardization. Moreover, these customers typically have considerable bargaining power and can be expected to protect their self-interest through arms-length negotiations.

In addition, many products or short-term services provided by DER providers do not lend themselves to standardized contracts or extensive regulatory oversight. For example, home energy audit

providers often provide their services in a single visit with a subsequent report and do not have a long-term relationship with the customer. Yet they could be considered DER providers. Is it the intent of the Commission to subject them to UBP-DERS?

We also note that this is an area of extensive state and federal influence, such that the DPS needs to carefully assess whether there are any remaining needs and gaps before requiring additional standardization.

Requirements Concerning Business-to-Business Issues

We support timely dispute resolution, although we ask for clarification on what is meant by an “informal complaint” (see DER Oversight Proposal at p.15). Does this have a legal meaning?

Specific Comments on the Proposed Regulations

We provide here comments on specific elements of the proposed UBP-DERS.

Section 1: Definitions

In the definitions for “Marketing”, “Sales Agreement” and “Termination Fee”, Staff does not appear to have updated the definitions from the UBP, since the term “ESCO” is used, and not “DERS”. In addition, when updating the definitions of “Sales Agreement” and “Termination Fee” it may not be sufficient to simply replace “ESCO” with “DERS”. Alternative wording may be needed. Also, the current definitions may not be applicable to all types of DER providers and DER products and services.

Section 2: Eligibility Requirements

These eligibility requirements appear to be drawn largely from the UBP for ESCOs. Consistent with our comments above, we ask the Commission to carefully review the proposed eligibility criteria to determine if any of them represent a potential overreach, are overly burdensome, are premature given the state of the market, or if they would not be applicable in all cases. For example, in B.1.1, the UBP-DERS application requires “A list of DER products and services offered that are to be included in the Digital Marketplace... and the customer classifications to whom they will be offered.” Unlike with ESCO services, keeping this up to date is likely to be burdensome to DER providers and to the Commission and DPS Staff alike. Similarly, under D.3.d, the proposed UBP-DERS states that DER providers must, “To

the extent required, post prices for DER products on the Digital Marketplace...and must guarantee to charge new customers no more than the price of the DERS' posted offers at the time of the customer's agreement for each product." Given a lack of definition around the nature of the "digital marketplace" this seems premature and potentially complicated.

Section 3: Customer Information

A. Applicability

As other aspects of REV become better defined we recommend revisiting this section to clarify the applicable means by which information exchange occurs. For example, applicable information exchange might occur in the "Customer Portal" not the "Digital Marketplace." This may be necessary to avoid unnecessary application of UBP-DERS to certain DER providers for which it is not applicable.

B. Customer Authorization Process

3.B.4. We recommend changing "calendar days" to "business days" here and in other places in the proposed regulations.

3.B.5. We have some concerns that the DSP may not be equipped to handle the volume of customer requests to block access, if many residential customers start to request blocking of their information along the lines of a "do not call" lists for telemarketing.

3.D. We note that there is some inconsistency between this provision, i.e., that no DSP shall impose charges on DER providers for provision of data described in Section 3, and certain demonstration projects, specifically, the Central Hudson demonstration that is looking at charging customers for granular data. We recommend that the demonstration projects proceed as envisioned but that in general, we support the position that DER providers should not be charged for customer data. In the event there are other inconsistencies between the UBP-DERS and demonstration projects, the UBP-DERS should not apply so that the demonstration projects can be run as planned, since there may be good reasons for conducting those demonstrations differently than how one would expect a more mature market to operate.

Section 4: Marketing Standards

A. Applicability

In this section Staff proposes that the marketing standards would apply to DER provider “...when marketing products and services associated with DER products and services sold to the DSP and/or which are identified on the Digital Marketplace or any other vehicle established under the Commission’s authority, to customers in New York.” This requirement does not match what the Commission issued in their Track 1 Order. Specifically, in that Order, the Commission said that they would exercise oversight over DER providers when they acquire customer data by any means established under the Commission’s authority. We view this as different from how Staff has defined this criterion in this section. This difference is similar to our concerns raised above on requiring a clearer distinction between participation in the Digital Marketplace and acquisition of customer data by means established by the Commission.

4.B.8. We recommend changing “five days” to “five business days”.

Section 5: Customer Agreement

In general, we find the scope of this section to be too broad and we are not sure that the Commission has jurisdiction over all DER providers and sales. The Digital Marketplace may include items that generally do not lend themselves to contracts. For example, many of the easier products to market are common household items such as smart thermostats or appliances. In thinking about the way that other digital marketplaces, such as Amazon, operate, the proposed rules could stifle transactions and limit the market. Some of the demonstration projects may better illustrate concepts for a digital marketplace.

Conclusions

The advanced energy community strongly supports the efforts of the Commission in this proceeding, and is committed to playing its part to create a high-performing electricity system in New York State. We appreciate the opportunity to provide Initial Comments on the DER Oversight Proposal and look forward to working with the Commission and other parties to craft suitable DER oversight guidelines. However, we would strongly urge the Commission to not chill the potential for an innovative and robust transactional market for DER in New York State. As proposed by Staff, the advanced energy community believes that both the applicability and scope of the UBP-DERS are too broad and premature.

Instead of broad UBP-DERS mandatory requirements, we would encourage the Commission to focus on the two criteria under which it concluded in its Track 1 Order that oversight would be applicable and appropriate, and craft guidelines consistent with those two specific criteria.