

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on September 12, 2018

COMMISSIONERS PRESENT:

John B. Rhodes, Chair
Gregg C. Sayre
Diane X. Burman, dissenting
James S. Alesi

CASE 18-E-0485 - Petition of NRG Community Solar LLC for a
Declaratory Ruling Concerning SC2 and VDER
Tariffs for Community Solar Projects, or in the
Alternative, for Clarification and/or
Modification of the SC2 and VDER Tariffs of
Central Hudson Gas and Electric Corporation and
Orange and Rockland Utilities, Inc.

DECLARATORY RULING REGARDING COMMUNITY
DISTRIBUTED GENERATION COMPENSATION

(Issued and Effective September 13, 2018)

BY THE COMMISSION:

INTRODUCTION AND BACKGROUND

In order to offer the benefits of clean, distributed energy to ratepayers that might not otherwise have access to them, and to encourage the continued development of renewable resources, the Public Service Commission (Commission) created New York's Community Distributed Generation (CDG) program and established rules for compensation of CDG project subscribers, pursuant to the CDG Order.¹ The CDG program allows the owner of

¹ Case 15-E-0082, Policies, Requirements and Conditions For Implementing a Community Net Metering Program, Order Establishing a Community Distributed Generation Program and Making Other Findings (issued July 17, 2015) (CDG Order).

an eligible distributed generation project, referred to as the Sponsor, to inject electricity into the utility system in return for credits, which are distributed to members of the CDG project in order to reduce the utility bills of those members.

Under the CDG Order, the value of those credits is based on utility rates, consistent with net energy metering (NEM) rules.² The CDG Order stated that non-demand-metered CDG projects (e.g., projects served under Service Class [S.C.] 1 or S.C. 2 Secondary Non-Demand Billed in the Orange and Rockland Utilities, Inc. (O&R) tariff) would generate volumetric credits, which are transferred to a subscriber's utility bills as kWh credits and reduce that bill based on the \$/kWh rate applicable to that subscriber. By contrast, the CDG Order stated that demand-metered CDG projects (e.g., projects served under S.C. 2 Secondary Demand Billed or S.C. 2 Primary Demand Billed in the O&R tariff) would generate monetary credits, which are transferred to a subscriber's utility bills as dollar-value credits based on the \$/kWh rate applicable to the project.

The Commission modified the compensation rules for CDG projects in the Value of Distributed Energy Resources (VDER) Transition Order.³ The VDER Transition Order directed that the compensation for eligible distributed energy resources (DER) transition from NEM to the Value Stack. The Value Stack is a methodology that computes compensation based on the actual, calculable benefits that such resources create.

As transitional mechanisms, the VDER Transition Order established Phase One NEM, which includes a limited continuation

² New York State Public Service Law (PSL) §66-j.

³ Case 15-E-0751, Value of Distributed Energy Resources, Order on Net Energy Metering Transition, Phase One of Value of Distributed Energy Resources, and Related Matters (March 9, 2017) (VDER Transition Order).

of NEM-style compensation, and an adder to the Value Stack for mass market customers, which is referred to as the Market Transition Credit (MTC).⁴ Three declining Tranches of MWs of CDG capacity were established in each utility service territory, with projects in Tranche 0/1 receiving either Phase One NEM or the Value Stack with the highest level of MTC, depending on when they met specified qualification requirements, while projects in Tranches 2 and 3 receive the Value Stack with lower MTC levels.

The MTC for Tranche 1 was designed to make the total Value Stack for projects receiving that MTC approximately equal to the value of NEM, as calculated for a project receiving volumetric crediting. The VDER Transition Order explained that this would result in Phase One NEM projects and Tranche 1 projects receiving approximately equivalent compensation. In addition, the VDER Transition Order calculated the costs of the transitional mechanisms by assuming that Phase One NEM projects and Tranche 1 projects will impose the same costs.

On July 30, 2018, NRG Community Solar LLC (NRG Solar) filed a Petition for a Declaratory Ruling Concerning SC2 and VDER Tariffs for Community Solar Projects, or in the Alternative, for Clarification and/or Modification of the SC2 and VDER Tariffs of Central Hudson Gas and Electric Corporation (Central Hudson) and Orange and Rockland Utilities, Inc. (O&R) (the Petition). NRG Solar is the owner of several CDG projects in the service territories of Central Hudson and O&R that are entitled to Phase One NEM compensation. The Petition states that, based on utility statements, several of these projects are, or are likely to be, subject to demand-metered service

⁴ Mass market customers are defined as customers within a jurisdictional electric utility's residential or small commercial service class that are not billed based on peak demand.

classes. Furthermore, the Petition explains that the utility tariffs for Phase One NEM apply monetary crediting to CDG projects served under demand-metered service classes, based on the CDG Order.

NRG Solar explains that it has planned the projects, invested substantial funds, and signed up customers based on a belief that the projects would receive volumetric crediting and that receiving monetary crediting instead would substantially impair the value of projects. NRG Solar requests that the Commission find that Phase One NEM CDG projects should qualify for non-demand rate classes and thus generate volumetric bill credits. In particular, the Petition seeks a declaratory ruling stating that Central Hudson and O&R's interpretations of their S.C. 2 and VDER tariffs are inconsistent with the VDER Transition Order and CDG Order or, in the alternative, requests an order clarifying or directing the modification of those tariffs.

This Declaratory Ruling determines that O&R and Central Hudson are correctly determining the appropriate service class for each customer, including CDG projects, based on their tariffs. However, this Declaratory Ruling declares that, pursuant to the Commission's VDER Transition Order, CDG projects that receive compensation under Phase One NEM rules shall have credits distributed to their subscribers using a volumetric crediting methodology, regardless of the project's service class, meter type, or billing methodology. This Ruling does not affect the compensation of CDG projects receiving Value Stack compensation, including CDG projects in Tranches 1, 2, 3, or 4.

THE PETITION

NRG Solar explains that it is developing a number of CDG projects in New York, primarily in the O&R and Central

Hudson service territories. NRG Solar states that it has a number of projects in those territories that qualify for Phase One NEM, all of which have fully funded interconnection payments and two of which are mechanically complete and fully subscribed.

NRG Solar explains that it made investments, conducted financial analysis, and enrolled customers based on an understanding that the projects would be served under non-demand-metered service classes and receive volumetric crediting. NRG Solar states that it recently and unexpectedly learned from O&R that, because the projects are designed to connect to the utility's grid at primary voltage, those projects only qualify for a demand-metered service class and will therefore receive monetary crediting. NRG Solar states that redesigning its projects to connect at secondary voltage would cause costs in the range of \$100,000 per project and delays of nine months or more.

In addition, NRG Solar states that both Central Hudson and O&R's tariffs contain load and consumption thresholds that, if met, result in a project served on a non-demand-metered service class being moved into a demand-metered service class. NRG Solar states that this threshold could be met based on "parasitic load" associated with the projects, which it explains includes load associated with nighttime operation of the projects' inverters, as well as heating required for certain equipment components in winter. NRG Solar argues that there is no relationship between a project's load and the bill crediting applicable to its subscribers, and that the risks at issue for NRG Solar appear to be an unintended consequence of service classes designed for commercial energy users, rather than CDG projects.

NRG Solar argues that during the development of the VDER methodology, it was assumed and understood that CDG

projects compensated under Phase One NEM would be eligible for non-demand-metered service classes and volumetric crediting. NRG Solar notes that the rates of non-demand-metered service classes were used to calculate the CDG tranche sizes and the MTC value. For this reason, NRG Solar explains, granting the Petition and thereby allowing Phase One NEM CDG projects to be placed in non-demand-metered service classes and receive volumetric crediting will not increase ratepayer costs above the net incremental revenue impacts calculated and authorized in the VDER Transition Order.

NRG Solar therefore requests that the Commission issue a Declaratory Ruling finding that Phase One NEM CDG should be placed in a non-demand-metered service class and receive volumetric crediting or, in the alternative, direct O&R and Central Hudson to revise their S.C. 2 and VDER tariffs to allow Phase One NEM CDG projects to be placed in a non-demand-metered service class and receive volumetric crediting.

NRG Solar attaches an Appendix to the Petition stating that the New York Solar Energy Industries Association, Inc. and the Coalition for Community Solar Access support the Petition. NRG Solar also states that it served Central Hudson and O&R with the Petition, as required by 16 NYCRR 8.2(b).

COMMENTS

Pursuant to 16 NYCRR 8.2(c), responses to a petition for a declaratory ruling must be filed within 21 days of the filing of the petition. Comments on the Petition were therefore due on August 20, 2018. Comments were received from O&R, Central Hudson, Borrego Solar Systems, Inc. (Borrego), Cypress Creek Renewables (Cypress Creek), and Nexamp Inc. (Nexamp).

Borrego, Cypress Creek, and Nexamp express support for the Petition. Borrego and Cypress Creek state that they have

encountered similar situations to those described in the Petition in their development of CDG projects throughout New York. Borrego, Cypress Creek, and Nexamp state that it is illogical and inconsistent with the VDER Order for a CDG project's crediting methodology to be based on its service class. They request that the relief the Petition requests be granted and extended statewide.

O&R opposes the Petition. O&R states that it is, and has been, plain in the relevant tariff that NRG Solar's projects, as designed, will be demand-metered and that demand-metered CDG projects receive monetary crediting. O&R argues that this is the obvious and correct interpretation of its tariff and that NRG Solar has failed to meet the "high bar" for a tariff waiver, as established by the Commission in past proceedings.⁵ O&R additionally notes that NRG Solar could receive compensation approximately equivalent to volumetric crediting for the projects at issue by opting into the Value Stack, as those projects would be eligible for Tranche 1 compensation if they did so.

Central Hudson also opposes the Petition. Central Hudson argues that the petition is premature with regard to Central Hudson's utility territory because it is not known at this time whether any of NRG Solar's projects will be served based on demand-metered service classes and therefore receive monetary crediting. In addition, Central Hudson argues that all customers, including CDG projects, should be required to install a demand meter and pay demand charges where their usage meets the relevant standard to avoid inequitable cost shifts among service classes. Central Hudson explains that, in addition to

⁵ E.g., Case 16-M-0368, Joint Petition of Cornell University and Argos Solar, LLC, Declaratory Ruling Regarding Tariff Provisions (issued January 26, 2017).

ensuring customers pay appropriate rates, demand meters are important in ensuring the utility has valuable information about customer load. Finally, Central Hudson notes that NRG Solar did not contact Central Hudson to discuss the issues raised in the Petition prior to filing the Petition and states that, had NRG Solar done so, or if it does so now, Central Hudson would be willing to discuss the concerns and potential remedies.

LEGAL AUTHORITY

The Commission is authorized to issue a declaratory ruling with respect to: (i) the applicability of any rule or statute enforceable by it to any person, property, or state of facts; (ii) whether any action by it should be taken pursuant to a rule; (iii) and to decline to issue such a declaratory ruling. This authority is expressly established by State Administrative Procedure Act §204 and governed by the Commission's Rules of Procedure, contained in 16 NYCRR Part 8, implementing that statute.

As described in the VDER Transition Order, the Commission has the authority to direct the treatment of DER by electric corporations pursuant to, inter alia, Public Service Law (PSL) Sections 5(2), 66(1), 66(2), and 66(3). Pursuant to the PSL, the Commission determines what treatment will result in the provision of safe and adequate service at just and reasonable rates consistent with the public interest.

DISCUSSION AND CONCLUSION

The standards for classifying customers, as well as the rates applicable to each class, have been established for each utility as part of comprehensive rate cases. They are developed through the work of numerous parties to those proceedings, including utilities, customers, interest groups,

and Department of Public Service Staff. By directing the filing of tariffs at the conclusion of a rate case, the Commission finds, pursuant to its legal obligation and the principles of ratemaking, that the service classes established in those tariffs and the rates set for each service class are just and reasonable.⁶

While the service classes and their rates have different impacts on each customer, modification or waiver of a tariff provision to allow a customer to be served under a different service class than the tariff requires carries a high risk of violating the principle that all similarly situated customers should receive equal treatment. To waive tariff provisions whenever a customer's particular situation would result in a significant financial impact would defeat the purpose and intent of rate proceedings. As Central Hudson and O&R argue, the bar for a waiver to a tariff is very high and NRG Solar has not met that burden. Furthermore, Central Hudson correctly argues that applying the appropriate service class to a customer that meets the standards for a demand meter is appropriate both to avoid inequitable cost shifts among service classes and to ensure that utilities have appropriate metering.

However, NRG Solar, as well as the commenters supporting the Petition, correctly identify a conflict between the VDER Transition Order and utilities' Phase One NEM tariffs. The VDER Transition Order clearly identifies Tranche 0, which entitles projects to Phase One NEM, as financially equivalent to Tranche 1. As the MTC for Tranche 1 was calculated based on volumetric crediting, this is only true where Tranche 0 projects receive volumetric crediting, since CDG projects that receive monetary crediting will receive significantly less value.

⁶ Public Service Law (PSL) §§ 65(1), 66(1), (5), (12).

Similarly, the calculation of net revenue impacts of the Tranches assumed that Tranche 0 and Tranche 1 would have approximately the same costs, which is only true if they provide approximately the same compensation.

For these reasons, the correct interpretation of the VDER Transition Order requires that projects that qualify for Tranche 0, and therefore Phase One NEM compensation, receive volumetric crediting, regardless of their service class. While it is true that, as O&R states, Tranche 0 projects are free to opt into the Value Stack and will receive Tranche 1 compensation if they do so, projects should not be forced into a different compensation mechanism than they are entitled to based on an incorrect interpretation of the VDER Transition Order.

For these reasons, CDG projects should be placed in the appropriate service class based on their usage and applicable tariff rules. However, the members of CDG projects receiving compensation under Phase One NEM, that is Tranche 0 projects, should receive volumetric crediting, regardless of the project's service class, meter type, or billing methodology. As this Declaratory Ruling is explaining and clarifying the effect of prior orders, rather than establishing a new rule or modifying existing rules, it applies to all utilities with VDER tariffs.

The Commission finds and declares:

1. Pursuant to the Commission's Order on Net Energy Metering Transition, Phase One of Value of Distributed Energy Resources, and Related Matters, issued on March 9, 2017 in Case 15-E-0751, community distributed generation projects that receive compensation under Phase One Net Energy Metering rules shall have credits distributed to their subscribers using a

volumetric crediting methodology, regardless of the project's service class, meter type, or billing methodology.

2. This proceeding is closed.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS
Secretary