

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on April 16, 2015

COMMISSIONERS PRESENT:

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

CASE 14-E-0151 - Hudson Valley Clean Energy, Inc. - Petition
for an Increase to the Net Metering Minimum
Limitation at Central Hudson Gas & Electric
Corporation.

CASE 14-E-0422 - Solar Energy Industries Association, Alliance
for Clean Energy New York, the Vote Solar
Initiative, the National Resources Defense
Council and The Alliance for Solar Choice -
Petition to Clarify the Process for Utilities
to Seek Relief from Net Metering Caps.

ORDER GRANTING REHEARING IN PART,
ESTABLISHING TRANSITION PLAN, AND MAKING OTHER FINDINGS

(Issued and Effective April 17, 2015)

BY THE COMMISSION:

BACKGROUND

The Order Raising Net Metering Minimum Caps, Requiring
Tariff Revisions, Making Other Findings, and Establishing
Further Procedures (NEM Cap Order), issued December 15, 2014 in
these proceedings, addressed a rate design currently in place
for remote net metering that has resulted in an unanticipated
opportunity for uneconomic arbitrage. Under existing utility
rate designs, a farm or non-residential customer pursuing remote
net metering at a site where a non-demand rate is in effect

obtains monetary credits that can be applied to bills at satellite sites, where volumetric rates are generally lower.¹ A non-demand customer locating generation eligible for net metering at a single on-site location, however, obtains only a volumetric credit, applicable only to the bill at that site. In addition, demand customers, whether net metering remotely or on-site, obtain monetary credits, but at the volumetric rates accompanying their demand service classifications that are comparatively lower than the volumetric rates in effect under non-demand classifications.

As a result, monetization advantages remote net metering customers over on-site net metering customers, encouraging customers to arbitrage by pursuing projects at remote instead of on-site locations. To remedy this uneconomic preference, utilities were directed to modify their tariffed rate designs to replace monetary crediting with volumetric crediting at remote net metered sites where non-demand rates are in effect.

As emphasized in the NEM Cap Order, however, the modification of the rate design must be implemented without disrupting the plans of developers seeking in good faith to bring solar and other net metered generation projects on-line. As a result, in the NEM Cap Order, and the subsequent Order Clarifying Prior Order (Clarification Order) issued January 9, 2015 in these proceedings, several categories of projects were grandfathered into monetary crediting, including: existing remote net metered facilities; successful participants in New York State Energy and Research Development Authority (NYSERDA) solicitations conducted through Program Opportunity Notices

¹ Throughout this Order, farm customers are deemed included in references to non-residential customers.

(PON) and in the Request for Proposals (RFP) process conducted by New York City (NYC) for development of renewable facilities at the Freshkills landfill (subject to compliance with the terms and conditions of those grants); and, those named in completed preliminary interconnection applications queued by the major electric utilities that offer net metering as of December 11, 2014.²

Following the issuance of the NEM Cap Order and the Clarification Order, petitions for rehearing were filed, arguing that the grandfathering process prescribed for moving from monetary to volumetric crediting disrupted the development of meritorious solar projects needed to achieve New York's solar energy goals. Moreover, comments were received that propounded a wide variety of grandfathering proposals ranging from expansive to constrained to those listed in the NEM Cap Order.

Therefore, in an Order Staying Prior Order in Part issued February 27, 2015 in these proceedings, it was decided that a more orderly process for transitioning away from monetary crediting was needed. To properly manage the transition, the NEM Cap Order and Clarification Order grandfathering provisions were stayed. Moreover, the filing of tariffs that would implement the change in methodology from monetary to volumetric crediting was also stayed because the making of those filings could artificially obstruct the development of an orderly process for making the transition away from monetary crediting. The Stay Order also provided for development of a Transition Plan for the Commission's consideration. The requisite Transition Plan was promulgated in a Notice Soliciting Comments

² The NYSERDA competitive solicitation PONs were more completely described in the Erratum Notice issued December 16, 2014 in these proceedings.

on Transition Plan (Transition Plan Notice) issued March 19, 2015 in these proceedings.

Timely petitions for rehearing of the NEM Cap Order were received within the 30-day period prescribed under PSL §22 and 16 NYCRR §3.7. Moreover, in conformance with State Administrative Procedure Act (SAPA) §202(1), a notice was published in the State Register on December 31, 2014. The SAPA §202(1)(a) period for submitting comments in response to the notice expired on February 17, 2015. Subsequently, the Transition Plan Notice called for comments due April 2, 2015. Numerous comments were filed in response to the Notices.³

DISCUSSION AND CONCLUSION

The Transition Plan was developed in response to the issues raised in the petitions for rehearing and the comments on the replacement of monetary crediting at non-demand remote metered locations with volumetric crediting. It was intended to address the claims that the grandfathering process adopted in the NEM Cap and Clarification Orders was too abrupt and posed the potential for the disruption of meritorious plans for developing solar generation projects. Accordingly, the question now before the Commission is the adequacy of the Transition Plan as a means for moving from monetary to volumetric crediting while removing obstacles to the development of planned solar and other net metered projects.

The filings discussed above also raise some issues besides the Transition Plan. For example, some of the filings discuss existing electric utility tariffs, resolution of disputes between net metering developers and utilities, and

³ The petitions for rehearing, the comments in response to the Staff notice and the comments in response to the Transition Plan are summarized at Appendices A, B and C, respectively.

NYSERDA's policies for pricing its PONs. These and other such issues are also addressed further below.

The Transition Plan

A. The Transition Plan Provisions

The Transition Plan seeks to achieve the goals of moving from monetary to volumetric crediting without disrupting the development of planned net metered solar projects by setting a May 1, 2015 date for meeting standards that would grandfather a project into monetary crediting. Standards have been set in five categories: 1) projects that have been interconnected; 2) projects where a preliminary interconnection application has been submitted to the relevant utility; 3) projects where applications for grants have been completed in specified NYSERDA PONs and NYC's Freshkills renewables RFP; 4) projects where applications have been completed in NYSERDA's NY-Sun MW Block Program; and, 5) projects that governmental entities have solicited through RFPs or Requests for Information (RFI).

To retain monetary crediting, a project would be required to enter service by the date NYSERDA, NYC, or other governmental entity identifies in its solicitation, or by December 31, 2016 if no such date is specified. The monetary crediting methodology would remain in effect for a term of 20 years from the later of the date of an Order here or the project in-service date.

B. Modifications to the Transition Plan

No commentator opposes the Transition Plan in concept. Various adjustments and clarifications to the Plan, however, are requested. A revised Transition Plan reflecting the modifications, discussed below, that have merit is provided at Attachment I.

Several developers of hydroelectric and wind facilities ask that the grandfathering provisions be extended to

sites where they are planning remote net metered facilities. Grandfathering should be accomplished in a technologically neutral manner. Therefore, grandfathering and the process for transitioning from monetary to volumetric crediting applies to all facilities eligible for remote net metering under both PSL §66-j and PSL §66-l.⁴ Moreover, as United Wind points out, encompassing wind generation facilities within grandfathering carries with it inclusion of NYSERDA PON 2439, a wind turbine incentive program, on the list of PONs where the filing of a complete application by the deadline is sufficient to obtain grandfathering.

ACE NY, Borrego and MEGA ask that the May 1 deadline be extended. An extension to June 1, 2015 is warranted, to ensure that the deadline is adequate to protect those developers who proceeded with planning for a project to a point where they depended on monetary crediting, but found their plans disrupted when the transition to volumetric crediting was proposed. Contrary to MEGA's suggestion, however, a longer extension is not justified. The purpose of the deadline is not to allow sufficient time for planning of a project to commence, or to bring merely preliminary efforts to fruition, in an effort by a governmental entity or otherwise to obtain monetary crediting. Therefore, setting a June 1, 2015 deadline in the Transition Plan, for completing the activities necessary to obtain grandfathering, is justified.

Moreover, the June 1 deadline is necessary to accommodate the MW Block Program for solar facilities in excess of 200 kW (200 kW Block Program). When the Transition Plan was issued, it was not known when NYSERDA would issue a PON opening

⁴ The provisions of the NEM Cap Order on system upgrades, limiting project size to 2 MW, and other issues shall also adhere to all such facilities.

that Program to applications for solar facilities in excess of 200 kW, albeit the issuance of the PON was expected near the end of March 2015. It now appears, however, that the requisite PON will not be issued until near the end of April 2015. A May 1 deadline for submitting applications consequently would not accommodate the interests of developers who have proceeded to plan projects for that NYSERDA solicitation. The June 1 deadline, however, is sufficient to allow developers who have planned their projects in excess of 200 kW in anticipation of the solicitation in the 200 kW Block Program to proceed, without unduly burdening the PON with applications from developers whose planning has not yet commenced or is only preliminary.⁵

Commentators also raise issues concerning the December 31, 2016 project in-service date. The Joint Utilities suggest that the date be truncated to March 31, 2016, while NYSEIA and others believe it should be extended to December 31, 2017. As noted in the Transition Plan, however, that date adheres only to projects where a separate in-service deadline is not provided for in a PON, RFP or RFI. As Cornell and others point out, those deadlines are sometimes subject to extension according to the terms of the solicitation, and they request that it be clarified that those extensions will be treated as remaining in compliance with the in-service deadline. That clarification is appropriate; so long as a developer is in compliance with the terms of the applicable solicitation, the Transition Plan's default deadline does not adhere.

Upon that clarification, extending the default in-service deadline to December 31, 2017 is appropriate. The longer period will place developers that did not participate in

⁵ Once issued, NYSERDA's PON number for the solicitation will be deemed added to the list of grandfathered PONs as an adjustment to the Transition Plan.

a governmental solicitation, where they might be able to obtain an extension, on an equal footing with those developers that did participate in a solicitation where an extension could be obtained. Since the December 31, 2017 date is a default deadline that adheres only where no solicitation controls, it will not override deadlines set in solicitations, and will not intrude upon the authority of governmental entities to establish in their solicitations their expectations for the completion of projects.

Borrego suggests that the December 31 deadline should not be measured against the standard of the project in-service date. Instead, Borrego would devise a new standard, which it defines as a demonstration that a project is "mechanically complete."⁶ With the extension of the deadline to December 31, 2017, substituting a different standard for the in-service date is unnecessary because developers will have sufficient time to complete their projects.

Under the Transition Plan, developers are permitted to retain the monetary crediting methodology for a period of 20 years. The Joint Utilities maintain that period is too long, because it risks burdening ratepayers with excessive payments for too substantial a duration. Other commentators, however, argue that the period is too short because it does not match the length of commonly-used contractual obligations between a customer and developer that form the basis for the financability of a project. These commentators propose that monetary crediting be grandfathered for a longer period, either 25 or 30 years, or for the life of the project.

Extending the term for retention of the monetary crediting methodology to 25 years as the minimum period is

⁶ Borrego Comment, p. 3.

reasonable. Commentators have demonstrated that contractual obligations between project developers and customers often extend for a period of more than the 20-year term, and that selecting a 25-year period instead better matches existing practice.

While that period should be sufficient for making most financial arrangements, in some circumstances it might pose an obstacle to financability. Therefore, developers may petition for an extension of the period, upon a showing that the contractual arrangement for financing a particular project cannot be accomplished within a 25-year period, and a longer period is necessary.

Other proposals to expand grandfathering to categories beyond those provided for in the Transition Plan are rejected. In particular, several commentators believe that Notices of Intent (NOI) or other contractual arrangements for a site where a project will be located should be deemed sufficient to justify grandfathering. Even if it were assumed those arrangements were not merely speculative as an indicator of project development status, determining the adequacy of a particular contractual arrangement as proof of the extent of project development would be difficult, time consuming and engender disputes not easily or readily resolved. As a result, the categories of projects entitled to grandfathering will not be expanded.

Further Procedures

A. The Preliminary Interconnection Application

The Joint Utilities raise an issue on the adequacy of a preliminary interconnection application as a source of grandfathering. Under Step 3 of the Standardized Interconnection Requirements (SIR),⁷ a developer may undertake responsibility for the filing of such an application on behalf of a customer if the customer consents in writing. Besides that written consent, a standardized form contract must be attached to the application. A customer name and other customer information is required to complete the form. Therefore, a preliminary application in the name of the developer alone, absent the name of the customer, does not meet the requirements of the SIR and so cannot serve as the basis for grandfathering. Accordingly, utilities are entitled to reject applications lacking the customer name and accept applications only where that information is provided as of the date the application is filed.

The arguments of Sun Edison and others to the contrary lack merit. Sun Edison claims that applications should be accepted absent the name of a customer because its efforts to identify a site that is the subject of an application should be deemed sufficient to obtain grandfathering. Besides inconsistency with the SIR requirements discussed above, Sun Edison's proposal would unreasonably expand grandfathering in conflict with the intent of PSL §66-j and §66-l. Both of those statutes make it clear that a customer is needed to engage in

⁷ The SIR is updated upon revisions to net metering requirements, most recently in Case 13-E-0421, et al., Central Hudson Gas and Electric Corporation, et al., Untitled Order (issued January 22, 2014).

net metering. Therefore, naming a customer is a prerequisite to showing a net meter projection can be developed.

Sun Edison misinterprets the Transition Plan in claiming that it allows developers to file a completed application without identifying a customer. All the Transition Plan recognizes is that, under the SIR, developers may act on behalf of a customer in filing an application if the customer consents in writing. The Transition Plan, however, requires that the application be complete. Without a customer name, an application is incomplete because it does not comply with SIR, and the Transition Plan does not imply otherwise. Therefore, Sun Edison's proposal to treat preliminary interconnect applications as complete even if only in the name of the project developer will not be adopted.

B. Review of Grandfathering Qualifications

Given the various categories of projects that will be entitled to grandfathering, a process, as Borrego points out, is needed to identify those that have qualified for grandfathering. Otherwise, uncertainty over entitlement to grandfathering could disrupt project development. Therefore, utilities shall take the following steps through the preliminary interconnection application process ensure that developers may proceed with project development secure in knowing the credit methodology that will adhere.

Utilities shall review the preliminary interconnection applications received as of the June 1 deadline in conformance with Step 3 of the SIR and accept or reject them in accordance with SIR requirements and time frames. They shall then review those accepted applications and identify those that provide for remote net metering, and acknowledge to the developer and the customer in writing that grandfathering into monetary crediting has been justified by the acceptance of the application.

Utilities shall complete this acknowledgement process by July 1, 2015.

Interconnection applications will continue to be received well after June 1, however, for projects that are grandfathered because of participation in NYSERDA PONs and other governmental entity solicitations. For preliminary applications filed after June 1 but otherwise entitled to grandfathering, the developer and customer submitting the preliminary interconnection application shall include with it a written statement describing the solicitation that serves as the basis for grandfathering. Upon accepting or rejecting the preliminary application in accordance with SIR, utilities shall respond to these statements with a written acknowledgement, or rejection, of grandfathering.

If a developer and a customer do not desire monetary crediting even though entitled to grandfathering, they may elect volumetric crediting in the statement they submit. Utilities shall note the selection of this option in their acknowledgements. The preference for volumetric crediting also may be stated in response to a utility acknowledgement addressing a preliminary application filed on or before June 1, but the response shall be submitted within 60 days of the date of the acknowledgment. Where a preference for volumetric crediting is not stated, it will be assumed that monetary crediting adheres if there is an entitlement to grandfathering into it.

Other Issues

Several commentators complain of a tariff provision at many utilities that in effect restricts remote net metering to host-satellite relationships involving just a single generator, from which the credits will be distributed, installed only at the host location. These utility tariffs, however, have been

approved and have been in effect for some time.⁸ Additional procedures, including an opportunity to comment further, are appropriate before revisions to these existing tariffs are considered further. A proceeding will be established for that purpose through a Notice from the Secretary, as assisted by Department of Public Service Staff (DPS Staff), issued within 30 days of the date of this Order.

Instead of following the path taken in the Transition Plan, Borrego and the Binghamton Coalition, in comments filed before issuance of the Plan, propose that monetary crediting be expanded to include net metered generation installed on-site as well as at remote sites.⁹ They maintain having the same crediting methodology in effect at both types of sites would eliminate arbitrage opportunities between the two. Monetary crediting at non-demand locations, however, does not necessarily align with net metering policies because it might not precisely value those resources. More accurate valuations are under consideration in the Reforming the Energy Vision Proceeding (REV),¹⁰ and Borrego and the Binghamton Coalition are invited to raise their concerns and remedies there.

⁸ Case 11-E-0318, et al., Central Hudson Gas and Electric Corporation, Order Modifying and Authorizing Remote Net Metering Tariffs, Modifying Standardized Interconnection Requirements, and Requiring Micro-Hydroelectric and Fuel Cell Tariff Filings (issued November 21, 2011).

⁹ Following issuance of the Transition Plan, Borrego acknowledged the Plan was inconsistent with its proposed expansion, and decided to pursue revisions to the Plan instead of reiterating arguments in favor of the expansion.

¹⁰ Case 03-E-0188, Retail Renewable Portfolio Standard, Order Authorizing Funding and Implementation of the Solar Photovoltaic MW Block Programs (issued April 24, 2014)(NY-Sun Order).

Cornell and Sun Edison ask that a detailed dispute resolution process be established, whereby DPS Staff will resolve conflicts between the developers and the utility within specified deadlines. DPS Staff will assist, as it always has, developers and utilities in resolving their disagreements. Developers may also avail themselves of existing dispute resolution processes, and those that will be developed for Distributed Energy Resource (DER) providers generally in the REV Process. As a result, the overly-prescriptive process Cornell and Sun Edison propose is unnecessary.

Many commentators ask that the transition away from monetary crediting be coordinated with the incentives NYSERDA develops in the MW Block Program. NYSERDA is currently engaged in the ongoing process of developing the 200 kW Block Program solicitation, and is coordinating with DPS Staff and other stakeholders. Devising appropriate incentive levels that accommodate the transition away from monetary crediting may be accomplished in the NYSERDA process.

Mr. Weiss, Mr. Southworth, and others pursuing net metering at condominium, cooperative, and other similar types of large multi-residence buildings in New York City, raise issues concerning interactions between the specialized rates developed for service to those buildings, otherwise-applicable residential rates, and available non-residential, non-demand rates. These rate interactions, however, are unique to the service territory of Consolidated Edison Company of New York, Inc. (Con Edison). Since efforts to address circumstances at these buildings in that service territory are best addressed through discussions with Con Edison these issues will not be addressed in these proceedings at this time. They may, however, be raised for

further consideration if discussions with Con Edison do not lead to resolution.¹¹

CONCLUSION

Previously, the filing of tariffs that would substitute volumetric from monetary crediting at non-demand, remote net metered locations was postponed in the Stay Order. With the Transition Plan in place, the requisite tariffs may be filed, subject to the understanding that volumetric crediting will not adhere to remote net metered projects entitled to grandfathering into monetary crediting because within the scope of the Transition Plan, and that those projects remain subject to the continuing provisions of that Plan. Accordingly, the Joint Utilities shall file the requisite tariffs by June 29, 2015, to become effective on July 20, 2015.

The Commission orders:

1. The Transition Plan for moving from monetary to volumetric crediting at non-demand remote net metered locations, as described in the body of this Order and set forth at Attachment I hereto, is adopted. The petitions for rehearing filed in this proceeding are granted to the extent provided for in the Transition Plan and in the body of this Order and are otherwise denied.

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 are directed to file, in conformance with the discussion in the body of this Order,

¹¹ See Case 14-M-0101, Reforming the Energy Vision, Order Adopting Regulatory Policy Framework and Implementation Plan (issued February 26, 2015).

tariff leaves providing for crediting of remote net metered customers that are also non-demand customers on a volumetric instead of a monetary basis, for those prospective customers not grandfathered into monetary crediting under the Transition Plan described in the body of this Order. The tariff leaves shall be filed by June 29, 2015 to become effective on July 20, 2015.

3. The requirements of §66(12)(b) of the Public Service Law concerning newspaper publication of the tariff amendments described in Ordering Clause No. 2 are waived.

4. The electric utilities listed in Ordering Clause No. 2 shall identify and acknowledge the remote net metering projects entitled to grandfathering into monetary crediting in accordance with the discussion in the body of this Order.

5. The Secretary in her sole discretion may extend the deadlines set forth in this Order. Any requests 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 deadline.

6. These proceedings are continued pending compliance with Ordering Clause No. 2 and are thereafter closed unless the Secretary finds good cause to continue them further.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS
Secretary

ATTACHMENT I

TRANSITION PLAN

Net metered projects, under both Public Service Law §66-j and §66-l, meeting the following criteria and conditions will be allowed to retain monetary crediting at qualifying remote net metered locations. The issue of successor tariffs to net metering tariffs generally will be addressed in Track 2 of the Reforming Energy Vision (REV) proceeding.

By June 1, 2015:

- (1) Projects that have been interconnected; or
- (2) Projects for which developers have submitted a completed preliminary interconnection application to the relevant utility; or
- (3) Projects that have completed applications for grants through Program Opportunity Notices (PONs) 2112, 2439, 2589, 2860, and 2956 conducted by the New York State Energy and Research Development Authority (NYSERDA) or the Request for Proposals (RFP) process conducted by New York City for development of renewable facilities at the Freshkills Landfill; or,
- (4) Projects that have completed applications for grants in NYSERDA's NY-Sun MW Block Program for projects sized at more than 200 kW; or
- (5) Projects that a State, municipal, district, or local governmental entity has solicited through a Request for Proposals or a Request for Information issued in conformance with applicable law.

Milestones:

To retain monetary crediting, a project must enter service by the date specified in a NYSERDA PON or in its NY-Sun MW Block Program for projects sized at more than 200 kW, or

the New York City Freshkills Landfill RFP, or another governmental entity process, as that date may be extended by the relevant governmental entity, or by December 31, 2017 if no date is specified by a governmental entity.

Term:

The monetary credit will remain in effect for a term of 25 years from the later of the date of this Order here or the project in-service date. An extension of the period may be obtained upon a showing that the contractual arrangement for financing a particular project cannot be accomplished within a 25-year period, and a longer period is necessary.

APPENDIX A

THE PETITIONS FOR REHEARING

Six petitions for rehearing or clarification were filed on the Order Raising Net Metering Minimum Caps, Requiring Tariff Revisions, Making Other Findings, and Establishing Further Procedures issued December 11, 2014 in these proceedings (December Order), most primarily concerned with the change in remote net energy metering (RNEM) crediting from monetary to volumetric. The Petitioners are:

1. Alliance for Clean Energy NY (ACE NY), New York Solar Energy Industries Association (NYSEIA), Municipal Electric and Gas Alliance (MEGA), and New York State Association of Counties (collectively, the Alliance);
2. Mr. Michael Weiss;
3. Monolith Solar Associates LLC (Monolith);
4. Solar Energy Industries Association (SEIA);
5. Wal-Mart Stores, Inc. (Walmart); and
6. SunEdison, LLC (SunEdison).

The Alliance, Walmart and SEIA request a stay of the RNEM crediting change. SunEdison and Monolith request expansions of the grandfathering provisions for non-demand remote net metering crediting. Mr. Weiss addresses net metering issues at multiple-residence buildings in New York City.

A. Requests For a Stay

Asserting that the Commission failed to give public notice prior to promulgating the RNEM crediting change and thus committed an error of law, the Alliance requests that the Commission issue a notice soliciting comments on the RNEM crediting change, including the grandfathering provisions, and stay implementation of RNEM tariff revisions. In support of their request, the Alliance states that more than 25 public agencies, municipal and county governments have made investments in almost 40 MW of solar PV and small hydro projects that will become uneconomical as a result of the December Order because they likely do not satisfy its grandfathering provisions.

Clarifying that it is not seeking reconsideration of the RNEM policy determinations made in the December Order, SEIA requests that the RNEM tariff modifications be stayed until the Commission has taken public comment on the grandfathering criteria for RNEM projects set forth in the Order. In addition to the 40 MW of projects mentioned in the Alliance's petition, SEIA notes that there may be other projects under development that may be affected, including those involved in competitive procurement processes with public and private customers; projects that have customer or landowner commitments in place; projects that have applied for interconnection and paid for studies, but have not yet executed interconnection agreements; projects that participated in the referenced NYSDERDA Program Opportunity Notices (PONs) but were not awarded incentives due to uncompetitive bid prices (as opposed to lack of project maturity); and projects in PON 2112. SEIA argues that allowing for a public comment period for the grandfathering provisions in the December Order will reduce the risk of financial loss for stakeholders.

Walmart asks that the Commission stay the December Order's requirement that utilities file tariff leaves to change RNEM crediting, and notice the RNEM changes and invite stakeholders to submit comments. Walmart further states that if the stay is not effectuated, then its petition should be treated as a petition for rehearing. The request for rehearing is based on an argument that the Commission committed an error of law by failing to notice the RNM proposed changed pursuant to the State Administrative Procedures Act (SAPA).

B. Requests to Expand Grandfathering

Monolith argues that the Commission committed an error of fact in the December Order by limiting the scope of the projects that are grandfathered under the new RNEM policy. This

limitation, Monolith complains, undermining its financial expectations with respect to approximately 231 projects, totaling 25 MW, that it currently has under development. Monolith claims changing the remote net metering credit calculation from a monetary credit to a volumetric credit can reduce the value of the credits by nearly a third.

Monolith maintains that all of its pending projects depend on monetary remote net metering credits calculated at non-demand rates, yet none currently qualify under the grandfathering criteria established in the December Order. It demonstrates the effect of the RNEM crediting change by noting that, by the time an application is ultimately completed and submitted to NYSERDA, it has spent approximately \$15,000, per project, representing a total expense of \$3.47 million. Monolith further claims that its current expansion plans depend on the long-term revenue streams from their current projects. These plans include building a research and development and manufacturing facility in Bethlehem, New York, which is supported by up to \$800,000 in incentives through Empire State Development.

The grandfathering provisions, Monolith argues, should be expanded to include: (i) RNEM projects for which the developer has secured, by December 11, 2014, an executed letter of intent (LOI) to enter into a power purchase agreement (PPA) or other similar agreement (or a fully executed agreement) related to project output; (ii) RNEM projects for which the developer has secured, by December 11, 2014, an executed LOI (or a fully executed agreement) from the property owner, securing the relevant property rights associated with a project; or (iii) RNEM projects for which the developer has submitted, by December 11, 2014, a complete application to NYSERDA for participation in either a competitive solicitation or PON 2112.

SunEdison contends that the Commission committed an error of fact in establishing the grandfathering provisions of the December Order that exclude some customers and developers who have made significant investments in projects. SunEdison notes that, of its 135 MW in pending RNEM projects under development in New York State, only three will qualify for grandfathering under the December Order criteria.

SunEdison interprets a prior declaratory ruling as explicitly allowing monetary remote NEM credits calculated using non-demand rates, and that no solar market participant received notice that the Commission would reverse its interpretation in the December Order. SunEdison therefore requests expansion of the December Order's grandfathering provisions to include projects that meet any of the criteria: (i) the project developer or customers has secured an executed LOI from the property owner for the exclusive right to enter into a lease or sale agreement for the project site (SunEdison notes that 80-90% of LOIs do not mature into binding option agreements); (ii) the project developer or customer has established site control for the project site, e.g. through an executed option, purchase or lease agreement (SunEdison states that it spends approximately \$150,000 per project from its commencement to completion of this stage); (iii) projects where the customer and developer have executed an LOI to enter into a PPA, Net Energy Metering(NEM) Credit Agreement or equivalent (or fully executed agreements for any of these); (iv) projects for which the developer or customer has submitted an administratively complete Interconnection Application to the utility pursuant to the Standardized Interconnection Requirements (SIR)(SunEdison contends that the cost of this phase is \$85,000, on average, per project); (v) projects for which project/site development has been awarded to the developer or customer by either (a) a public entity

following a competitive solicitation process conducted pursuant to municipal or state procurement laws or (b) a non-residential customer pursuant to a request for proposals; and, (vi) projects that meet the threshold eligibility requirements for participation in a competitively-awarded incentive auction conducted by NYSEERDA pursuant to any prior PON.

SunEdison supports the latter request by stating that the December Order grandfathering requirement of securing a NYSEERDA award is not an appropriate indicator of project maturity; it omits projects that were denied incentives for reasons other than project maturity. SunEdison also points out that the most recent NYSEERDA PON closed on July 17, 2014, with the next NYSEERDA MW Block program expected to open at the end of March 2015.

Addressing dispute resolution, SunEdison proposes that, once a dispute over net metering is submitted to DPS Staff, it will issue a determination on that dispute within 15 days. If either party disagrees with the determination, that party can then formally petition the Commission, with the Commission determining what weight to afford DPS Staff's determination. SunEdison believes that the basis for the RNEM crediting change is erroneous, because the decision ignores the fact that RNEM projects often incur higher site acquisition interconnection costs than on-site NEM.

SunEdison also filed supplemental comments to its petition that clarified the requirements for an LOI that would be acceptable for grandfathering purposes.¹ These include: (i) the identification of the subject parcel through a tax or parcel identification number or street address; (ii) a defined option

¹ Although unauthorized, the supplemental comments will be considered because it contributes to the development of a complete record and is not prejudicial.

period and option payment amount; (iii) a description of the lease term and payment rate; (iv) the landlord's commitment to deal exclusively with the developer once the LOI is executed; and, (v) signatures of both the landlord and the project developer. Referencing its statement in its initial comments that 80-90% of LOIs do not mature into binding option agreements, SunEdison states that the attrition rate is intended to represent industry-wide averages and may have been overstated, particularly when there is a well-defined LOI. SunEdison explains that it has converted 30% of its LOIs into binding agreements, and that most of the remainder are still the subjects of active negotiations.

New York City Issues

Mr. Michael Weiss is a resident of a co-op in Brooklyn that has a 50 kW rooftop solar system. He states that the net effect of net metering for the co-op's installation at the rates the utility charges is that the rate the residents pay for the solar electricity is greater than the otherwise-applicable residential rate, because the co-op's high demand charge can concomitantly reduce the size of the volumetric rate and thereby reduces the value of the credit. Therefore, he claims, the 'uneconomic arbitrage' of allowing monetary credits to offset demand charges actually serves to equalize electricity rates across solar customers residing in co-ops as opposed to residing at individually-metered locations.

Mr. Weiss makes four requests: 1) allowing demand based multi-residential building service classification customers to switch to the non-demand based residential service classification; 2) for co-ops, cap the rate at the level of the effective monthly rate paid for energy set in residential rates; 3) allow remote net metering for Mr. Weiss' co-op; and, 4) stay the changes to remote net metering policy.

APPENDIX B

COMMENTS IN RESPONSE TO SAPA

Comments filed in response to SAPA, addressed the December Order and the rehearing petitions, and included filings by parties who had submitted rehearing petitions. Most commentators, including ACE NY, Borrego Solar (Borrego), SEIA, NYSEIA, and Sun Edison either support the petitions for rehearing or separately oppose the RNEM crediting changes promulgated in the December Order. The Joint Utilities,¹ SunPower Corporation (SunPower), SoCore Energy (SoCore), and Nexamp, Inc. (Nexamp), however, support the RNEM crediting changes made in the December Order, including the grandfathering provisions. Cornell University (Cornell) submitted comments requesting tariff changes on multiple host accounts serving a satellite account and on generation at satellite accounts. The latter request is supported by Binghamton University.

Parties both supporting and opposing the December Order RNEM change, however, point to a need to adjust NYSERDA's MW Block Program for projects greater than 200 kW in light of the RNEM crediting change. The commentators claim incentive levels in this program were designed based on an assumption that monetary crediting would be available for non-demand remote net metered accounts. The Binghamton Coalition also expresses concern about the program assumptions, noting that, as a result, projects that are not grandfathered are unlikely to move forward in the upstate market.²

¹ Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., Central Hudson Gas & Electric Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, New York State Electric & Gas Corporation, and Rochester Gas and Electric Corporation.

² The Binghamton Regional Sustainability Coalition represents a consortium of 16 environmental and public interest organizations.

A. Comments in Support of the Rehearing Petitions

1. Comments in Support of the Stay

Comments from the Allegany County Board of Legislators, Azure Mountain Power, CEC Energy, Endurance Wind Power, Inc., Energy Next, Inc. (Energy Next, representing MEGA), Erie County, the County of Rensselaer, Gravity Renewables, the Greene County Legislature, Northern Power Systems, the Commissioner of Finance for the City of Saratoga Springs, the St. Lawrence County Board of Legislators, and Tompkins County support the Alliance's petition for rehearing. The Development Authority of the North Country and the Lewis County Development Corporation echo requests for a stay, a public comment period, and a technology-neutral approach to net metered projects.

Comments from Borrego support Walmart's petition for a stay or rehearing of the December Order. Borrego argues that the December Order will have two unintended, negative consequences. First, Borrego asserts, the December Order unfairly distinguishes between the value of power produced by remote net metering facilities based on the rate classification of the satellite account; i.e., the power produced is worth less to a non-demand satellite account than to a demand satellite account. Borrego argues that this result contravenes the Commission's objectives in the Reforming the Energy Vision (REV) proceeding, Case 14-M-0101, by creating a price distinction even though, Borrego claims, the satellite's rate classification does not impact the system's underlying economic value.

Second, Borrego maintains that the RNEM change will prevent demand customers from participating in net metering. Pending further development of REV successor tariffs, Borrego proposes that the Commission both restore monetary crediting for remote net metering and adopt an interim policy (limited in duration or by capacity) of allowing on-site net metering

customers who are on a demand rate to switch to a non-demand rate.

Comments from Mr. Michael Weiss support a stay of the RNEM crediting change generally. The Binghamton Coalition requests either a stay of the RNEM change until the REV proceedings are completed or for an increase to NYSEERDA incentives for non-grandfathered large-scale solar projects to offset the impact of the RNEM change.

B. Comments in support of the December Order

SunPower and SoCore maintain that the December Order corrected the imbalance that previously favored off-site RNEM over on-site projects. SunPower argues that the RNEM grandfathering provisions in the December Order appropriately ensure equality amongst projects and protect investments. As a result, SunPower and SoCore oppose further expanding the RNEM grandfathering provisions, stating that more expansive grandfathering will disadvantage certain customers and preclude them from participation in the market for solar installations above 200 kW.

Nexamp disagrees with the rehearing petitioners' assertions that the December Order introduced a sudden change to the market, asserting that that Order instead clarified the rules where developers had interpreted them loosely. Nexamp also opposes changes to the grandfathering criteria, noting that any financial harm to the petitioners is a reflection of the business risks they willingly accepted.

The Joint Utilities make similar arguments. Citing the statutory prohibition against undue or unreasonable preference to a customer, Public Service Law (PSL) § 65(3), the Joint Utilities note that customers should not assume that rates or tariff provisions will remain unchanged. They point out that when tariffs are changed, customers are subject to the new

provisions unless the Commission, in its discretion, grants a specific waiver.

C. Expansion of Grandfathering Provisions

Comments from the County of Rensselaer, the Town of Bethlehem, Patricia A. Fahy (member of the New York State Assembly), John T. McDonald III (member of the New York State Assembly), Terence P. Murphy (member of the New York State Senate), and Paul Tonko (member of the U.S. House of Representatives), support Monolith's petition. Clarkson University, Gravity Renewables, and Borrego support SunEdison's petition. Tompkins County and the St. Lawrence County Board of Legislators requests for expansion of the grandfathering provisions mirror those of SunEdison.

ACE NY supports the expansion of the grandfathering provisions as requested by Monolith and SunEdison, as well as additional grandfathering, "in the interest of policy goals,"³ that would continue monetary crediting for RNEM until a successor tariff is implemented. Noting that the City of Saratoga Springs currently has an agreement with SunEdison for the development of a solar generating facility and is in the process of developing a micro-hydro project, the Commissioner of Finance for Saratoga Springs generally requests that the Commission expand the grandfathering provisions to include all projects under development.

Many of the parties submitting comments in support of expanding the grandfathering provisions note that some wind and micro-hydroelectric (micro-hydro) projects that they have in development currently are harmed by the RNEM change. These include: the St. Lawrence County Board of Legislators; Northern Power System; the Lewis County Development Corporation, which

³ ACE NY Comment at 3.

has completed two studies on micro-hydro projects for the Village of Croghan; Gravity Renewables, arguing that the RNEM change affects micro-hydro projects more so than other technologies; Energy Next, noting that Tompkins County, on behalf of MEGA, conducted a public procurement in 2013 for both solar and micro-hydro projects; Endurance Wind, noting that approximately 80 projects, representing an investment of \$23 million in rural New York, will be impacted by the RNEM change; and, Clarkson University, stating that a micro-hydro project that it has spent two years developing is in jeopardy. These parties also propose expanding the provisions of the December Order to forms of net metered generation other than solar in a technologically-neutral manner.

APPENDIX C

COMMENTS ON THE TRANSITION PLAN

The Joint Utilities and others submitted comments on the Transition Plan. SunEdison, Cornell and others submitted comments in reply to the Joint Utilities.¹

The Comments

ACE NY supports the broadening of the grandfathering criteria but suggests that the May 1, 2015 deadline be modified to a deadline forty-five days after the issuance of the Commission's order on the transition plan. SEIA recommends that the Commission act quickly to address the Transition Plan.

The Joint Utilities, in contrast, restate their support for the change to a volumetric crediting methodology and oppose expansion of grandfathering as increasing the subsidization of net-metered customers by non-net metered customers. In regard to the Transition Plan, the Joint Utilities state that the word 'developers' ought to be replaced with the word 'customers' in the second criterion stated in the Transition Plan, on preliminary interconnection applications, because the SIR require that an applicant for interconnection be a utility customer or an agent acting on behalf of a utility customer with the customer's express authorization to do so. That provision, Joint Utilities argue, prevents developers from gaming a system designed to protect the interests of customers.

In regard to the twenty-year term for retaining monetary crediting, the Joint Utilities suggest that it be limited to seven years, asserting that the average payback periods for net metered solar PV installations are often between three and seven years. The Joint Utilities also suggest that

¹ The Notice Soliciting Comments on Transition Plan did not provide for reply comments; however, the replies will be considered because permission was requested; they contribute to the development of a complete record; and, they are not prejudicial.

the in-service milestone date be set at March 31, 2016, rather than December 31, 2016, asserting that distributed PV installations can be installed in one year or less.

Borrego supports the transition plan, though it suggests, inter alia, that the grandfathering term last twenty-five years, rather than twenty.² Most of its projects, Borrego claims, are based upon power purchase agreements (PPAs) lasting twenty-five years, and its PON 2956 bids were calculated to reflect internal rates of return based on the net present value of twenty-five years of PPA payments. Borrego also recommends moving the May 1, 2015 deadline to thirty days from the date on which the Commission issues an order on the Transition Plan.

Borrego requests that the phrase "a project must enter into service" be replaced with "a project must be mechanically complete," to ensure that a project's grandfathering status is under the project developer's control, rather than subject to possible utility delay in placing the project into service. Borrego also believes that the Commission should establish a certification process for grandfathered projects to provide certainty for financing parties, though it also would allow a developer to opt out of monetary crediting by exercising a one-time, permanent cancellation of the monetary certification. Borrego final request is for clarification that the in-service milestone requirement allows for delays that are acceptable to the governmental entities establishing deadlines in their solicitations.

NYSEIA states that it supports the grandfathering criteria proposed in the Transition Plan as long as a transition

² Borrego comments were filed two hours after the comment deadline had passed. The comments will be considered because they contribute to the development of a complete record and are not prejudicial.

date of June 1, 2015 is adopted, interconnection application acceptance rules are standardized, and the NYSERDA Incentive Program is adjusted. Arguing for a June 1, 2015 deadline, NYSEIA states that it would allow for a more orderly conclusion of existing project development. NYSEIA also proposes to standardize interconnection application acceptance rules across utility service territories and create a dispute resolution mechanism for interconnection issues. Regarding an adjustment to NYSERDA incentives, NYSEIA notes that the transition from monetary remote net-metering will result in the loss of an incentive stream for some projects, and that NYSERDA's MW Block program incentive levels need to be significantly increased for all volumetric-net metered projects going forward to help maintain their economic viability.

NYSEIA recommends that the monetary credit be provided for thirty years for qualifying projects, noting that most PPAs cover a twenty-five year period and often are extended for an additional five years. Regarding the in-service milestone deadline, NYSEIA suggests its extension to December 31, 2017.

Cornell requests two clarifications of the Transition Plan. First, it requests that, rather than being set for twenty years, monetary crediting remain in effect for qualifying projects for the life of the projects; alternatively, it asks that the term be extended to at least thirty years from the later of the project in-service date or the Commission's order in this proceeding. Second, Cornell asks for acknowledgement that the in-service milestone deadline may be extended upon NYSERDA's extension of a PON or other solicitation. Cornell also supports the dispute resolution process propounded by Sun Edison.

Mr. McGowan Southworth, a resident of a solar-power-producing multi-family home and a solar development business

owner in New York City, submits a list of projects developed by his company that are impacted by the transition to volumetric crediting. Mr. Southworth proposes that the Commission add a criterion to the Transition Plan to grandfather net metered projects owned by multi-family residences. Similarly, Mr. Weiss reiterates his earlier comments in these proceedings on the difficulties Con Edison's rate structure poses to solar development at multi-residential buildings.

United Wind notes that NYSEERDA PON 2439, On-Site Wind Turbine Incentive Program, is not included among the grandfathering criteria, and states that there are projects submitted in this PON that benefit from the current remote net metering policy. United Wind requests that grandfathered projects include projects where customers have executed legally binding agreements for the development of renewable energy projects, including small wind energy systems.

EnergyNext notes that the Transition Plan generally addresses MEGA's concerns, though it would prefer the permanent retention of the monetary crediting scheme. Regarding the May 1, 2015 deadline, EnergyNext requests that it be set for public entities at two months from the Commission's order because those utilities require more time to conduct hearings and take legislative action in their consideration of renewable energy proposals.

Gravity Renewables contrasts solar and wind DG, which it states depend on grants and incentives, with small hydroelectric projects, which rely upon monetary net metering. Gravity Renewables supports, therefore, MEGA's recommendation that the May 1, 2015 deadline be extended to two months after the Commission issues an order on the Transition Plan.

The Replies

Replying to the Joint Utilities regarding their assertion that payback periods for net metered solar PV projects are between three and seven years, Cornell claims that most remote net metered projects are financed through PPAs, and, from a customer's perspective, do not have payback periods. Rather, Cornell notes, PPAs are structured to provide developers with competitive returns on the money lent or invested over the life of the PPA (when combined with tax credits and subsidies). The returns are based on customer payments under the PPA, and a customer's decision to enter a PPA is based in part on the value of remote net metering credits during the term of the PPA. While Cornell opposes a term limit for monetary crediting, it alternatively suggests that the term limit should be extended to thirty years.

Cornell also opposes the Joint Utilities' recommendation to change the project in-service deadline to March 31, 2016, noting that the proposed Transition Plan offers alternative deadlines as established by NYSERDA and other governmental entity soliciting projects. Cornell also believes that there are seasonal limitations on construction, as well as long processing times for interconnection requests.

BQ Energy opposes the Joint Utilities' argument that interconnection agreements cannot be submitted by developers, pointing to the non-discrimination requirement in the SIR and the standardized contract for interconnection, which provides that the interconnection contract may be assigned to any corporation or other entity. In response to the Joint Utilities' proposal for a seven-year term for monetary crediting, BQ Energy states that solar project financing assumes an economic life of greater than twenty-five years for individual projects. Regarding the in-service deadline, BQ

Energy recommends establishing a single December 31, 2016 deadline for all projects.

SunEdison responds to the Joint Utilities' evaluation of interconnection applications by noting that the December Order included a grandfathering provision specifically to avoid disruption to the investment interests of project developers. It notes that the industry practice is for developers to secure site control prior to identifying customers because developers must have a product in place - a viable generation site - prior to acquiring customers. Customers cannot be expected to act prior to a May 1, 2015 deadline, SunEdison asserts, and it oppose being pressed into such a deadline.

SunEdison argues that the SIR needs to be reviewed and updated, and suggests that the customer application requirement be suspended during that process. SunEdison therefore requests clarification that preliminary interconnection applications submitted by developers cannot be rejected by utilities because a customer's name is not provided.

Distributed Sun LLC (DSUN) replies to the Joint Utilities' recommendation that the monetary crediting term be reduced to seven years, by stating, as have other commenting parties, that PV project financiers rely less on the simple payback period than on the return on the investment over the course of the PPA. DSUN therefore requests that the monetary crediting term remain in place for the longer of twenty-five years or the term of the project's respective executed PPA. Responding to the Joint Utilities' recommendation that the in-service milestone deadline be changed to March 31, 2016, DSUN notes that it has submitted four interconnection applications to the local distribution utility that are pending review and approval; it claims all four applications have experienced delays in approval.

As have other commenting parties, DSUN mentions that seasonal limitations on construction in the winter make a March 31, 2016 in-service deadline impracticable. Finally, DSUN requests that the proposed May 1, 2015 grandfathering deadline be changed to ninety days after the Commission approves the utilities' compliance tariffs.

Responding to the Joint Utilities' suggestion to reduce the monetary crediting term to seven years, Borrego asserts that simple payback is not an appropriate financial metric in this instance, comparing its use to an argument for denying a utility the opportunity to earn a return on its rate base. Borrego also notes that its bids in PON 2956 were based on minimally sufficient returns, calculated assuming twenty-five year PPAs with residual value after the twenty-fifth year. Borrego states that the impairment of the value of a full-term PPA would seriously challenge the development of these projects.

Borrego argues that, even without a customer, an otherwise complete interconnection application signals sufficient development activity to justify the grandfathering of monetary crediting. Consequently, Borrego requests clarification that the interconnection process can begin for a remote net metered project in the absence of a named off-taker.