

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

In the Matter of the Value of Distributed Energy Resources

Case 15-E-0751

**COMMENTS OF THE CITY OF NEW YORK
ON THE CUSTOMER BENEFIT CONTRIBUTION
CHARGE**

Dated June 14, 2021

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PRELIMINARY STATEMENT

The City of New York (“City”) submits these comments in response to the Public Service Commission’s (“Commission”) *Notice Soliciting Comments Regarding Customer Benefit Contribution Charges* (“Notice”) issued on May 11, 2021 in the above-referenced docket. The Notice was issued in response to draft tariffs filed by the Joint Utilities in response to the Commission’s July 16, 2020 *Order Establishing Net Metering Successor* (“Order”) in this docket.

The City is committed to deploying clean distributed energy resources (“DER”), as they improve air quality, reduce greenhouse gas (“GHG”) emissions, and increase energy affordability, while providing opportunities for customers to participate in clean energy. The City has also supported the Value of Distributed Energy Resources (“VDER”) proceeding and Phase One Net Energy Metering (“Phase One NEM”), which have been instrumental in incentivizing DER. The implementation of the customer-benefit contribution (“CBC”) charge is a reasonable next step in supporting the continued growth of DER. The City commends Staff on its work to find a reasonable and equitable CBC charge that balances participant and ratepayer interests, and that appears to have a modest impact on project economics.

The City supports the proposed CBC but offers the following recommendations to improve the CBC’s implementation. First, the City continues to support an exemption from the CBC charge for low and moderate income (“LMI”) customers and affordable housing projects to ensure these

customers are not disproportionately impacted. Second, the City supports the proposed CBC as a long-term solution. However, if the Commission does not adopt the CBC as a long-term solution, the City asks the Commission to adopt guardrails to ensure that any future changes to the CBC are predictable and gradual, to provide market certainty. Third, the City urges the Commission to reject the Joint Utilities' proposal to apply a full CBC charge for demand-metered customers. Fourth, the Commission should reject the Joint Utility proposals to the extent they contravene express findings from the Order, in particular the proposals to apply a full CBC charge to certain large commercial rate classes utilizing Value Stack compensation and to include the Dynamic Load Management ("DLM") program costs into the CBC calculation. Lastly, the City seeks clarification in the proposed tariffs confirming that the CBC charge is not applicable to either energy storage assets, particularly DER resources paired with energy storage, or community distributed generation projects.

BACKGROUND

On December 9, 2019, the New York State Department of Public Service Staff ("Staff") filed the *Whitepaper on Rate Design for Mass Market Net Metering Successor Tariff* ("Whitepaper"), which proposed a CBC charge as part of an interim NEM successor tariff.¹ The Whitepaper offered ten questions for stakeholder input and solicited comments generally. The City offered comments responding to each question for the Commission's consideration.²

¹ Case 15-E-0751, In the Matter of the Value of Distributed Energy Resources, Whitepaper on Rate Design for Mass Market Net Metering Successor Tariff (filed December 9, 2019) ("Whitepaper").

² Case 15-E-0751, *supra*, Reply Comments of the City of New York (filed March 16, 2020); Case 15-E-0751, *supra*, Initial Comments of the City of New York (filed February 24, 2020) ("Initial Comments").

The Commission issued the Order on July 16, 2020. The Order directed the Joint Utilities to file draft utility tariff modifications to reflect the establishment of a CBC charge that would recover the costs of certain defined public benefit programs that customers with NEM-eligible technologies would otherwise avoid. The Joint Utilities filed the required CBC calculations and draft tariff leaves in November 2020. The Joint Utilities also provided a presentation regarding the proposed CBC and their tariff filings at the Rate Design Working Group meeting, which was held on March 25, 2021. The City participated and offered its comments in this meeting.

DISCUSSION

POINT I

LMI CUSTOMERS AND AFFORDABLE HOUSING PROJECTS SHOULD BE EXEMPTED FROM THE CBC

In its initial comments, the City advocated for an exemption from the CBC charges for LMI customers and affordable housing projects. The City noted that applying the CBC in the context of the power purchase agreement (“PPA”) model, in specific, would disproportionately affect LMI customers.³ The Commission briefly addressed this concern in the Order, but deferred the matter to the Rate Design Working Group, where it has not been adequately addressed.⁴ The City continues to support this exemption and urges the Commission to implement it.

As proposed, the CBC charges disproportionately affect LMI customers. The impact of the CBC charge on a customer who purchases a rooftop solar array outright is mitigated by the fact that all of the project’s benefits accrue to the owner. By contrast, under a PPA model, a residential

³ Initial Comments at 4-5.

⁴ Case 15-E-0751, *supra*, Order Establishing Net Metering Successor Tariff (issued July 16, 2020) at 24-25 (“Order”).

customer would still be subject to the entire CBC charge, but would only retain a portion of the project's benefits (after making the PPA payment to the third-party project owner). This suggests that the CBC charge will have an outsized impact on PPA projects and, by extension, LMI customers who may not have the means to purchase a solar array outright. Non-profit affordable housing may also employ third party ownership models like PPAs in order to access tax incentives. As it stands, the customer segments that may benefit the most from DER because of the energy affordability benefits, may also be the most impacted by the CBC charge.

The City emphasizes that the CBC charges must be balanced against the City's and State's equitable decarbonization objectives. Moreover, Staff has not yet performed the economic impact analysis necessary to ensure that the CBC charge does not have a disparate impact across different business models.⁵ Access is a fundamental principle of rate design, and the LMI and non-profit affordable housing customer segments, which already have lower DER adoption rates, should not face additional barriers to participating in and sharing in the benefits of greater solar deployment. Such disparities between solar business models serve to exacerbate inequality and jeopardize energy affordability objectives. Accordingly, the City recommends that LMI customers and affordable housing projects be exempted from the CBC charges.

POINT II

THE CBC SHOULD BE A LONG-TERM SOLUTION, BUT IF NOT, THE COMMISSION MUST ENSURE PROGRAM PREDICTABILITY AND CONTINUITY

A fundamental principle of rate design is that rates should encourage desired market and policy outcomes. NEM has played an important role in encouraging DER deployment and will

⁵ Whitepaper at 31-32.

likely continue to do so with the adoption of the CBC. Moreover, vendors and customers are familiar with NEM, and thus NEM's continuation provides market certainty.

A fundamental change to NEM would have the opposite effect. Staff suggests that the CBC be only a "bridge" tariff while a more permanent and "sophisticated" tariff is developed.⁶ If a successor tariff removes NEM as an option for customers, the successor tariff risks undermining the market certainty DER deployment requires. Furthermore, presenting the CBC as an interim measure with an impending, as-yet unknown successor tariff, has a similarly negative effect on certainty. Additionally, development of a more sophisticated tariff will undoubtedly involve significant process and stakeholder involvement that will consume substantial time and resources with no assurance of commensurate improvement. Accordingly, to encourage the City's and State's policy outcomes, the City requests that the CBC be a long-term solution, if not the successor tariff itself.

If the Commission does not adopt the CBC as a long-term solution, the City urges gradual and predictable changes to eventually reach a balance between any impacts on non-participating customers and achieving important policy objectives. Future changes to CBC charges should, to the extent possible, be known in advance so that customers and vendors are able to make decisions about projects with long development timelines and payoff horizons.

The City supports the annual recalculation of the CBC charges based on changes to public benefit program costs. The City also supports the adoption of a reasonable cap on how much the CBC could increase in any given interval. For example, the Commission applies a similar cap on changes to the Demand Reduction Values ("DRVs") under the Value Stack program.⁷ The DRVs

⁶ Whitepaper at 23.

⁷ Case 15-E-0751, *supra*, Order Regarding Value Stack Compensation (issued April 18, 2019) at 20.

can only be changed 5% every two years to avoid significant changes in either direction.⁸ Implementing a methodology that follows this gradual and predictable approach would maintain vendor and customer certainty while still balancing impacts on non-participating customers with the value of DER.

POINT III

THE COMMISSION SHOULD REJECT THE UTILITY TARIFFS TO THE EXTENT THEY APPLY THE FULL CBC TO DEMAND-METERED CUSTOMERS

The Joint Utilities have proposed a CBC charge that applies the full charge to demand-metered customers. For example, Con Edison's proposed tariff applies the CBC to both Phase One NEM and Value Stack demand-metered customers.⁹ The justification given for applying the CBC to any customer, regardless of delivery rate, DER compensation methodology, or customer class is to reasonably reduce any impacts to non-participating customers while maintaining robust DER deployment. However, the argument does not appropriately extend to demand-metered customers.

Staff has demonstrated that there is some impact on non-participating customers due to Phase One NEM, and proposed a reasonable CBC charge to mitigate that impact. However, Staff has not made such a demonstration for demand-metered customers and, for these customers, the impact has been demonstrated to be negligible.¹⁰ The Joint Utilities have not proven that there is an additional cost shift, or that the cost shift is not fully addressed by customers paying for their

⁸ *Id.* at 21.

⁹ Case 15-E-0751, *supra*, Con Edison CBC Workpapers (filed November 2, 2020) at 10-11, 32-33 ("Con Edison CBC").

¹⁰ Whitepaper at 28-29.

peak demand via demand-metering. The Commission explicitly acknowledged that the cost shift calculation is not the same as with typical NEM customers, stating that it is either “minimal” or nonexistent.¹¹ Absent additional evidence that there is an undue impact on non-participating customers, there is no reason to apply the CBC charge to demand-metered customers.

POINT IV

THE COMMISSION SHOULD REJECT THE PROPOSED 100% CBC ALLOCATION TO CERTAIN COMMERCIAL CUSTOMERS AND THE INCLUSION OF THE DLM PROGRAM COSTS IN CBC CALCULATIONS

The Commission should reject two discrete items within the draft utility tariffs: (1) the 100% allocation of the CBC charge to specified customer classes taking Value Stack compensation; and (2) the inclusion of the DLM program costs into the CBC calculation. Both provisions are inconsistent with the Order, and utility efforts to modify the Order via the tariff filings should be rejected.

First, the draft tariffs propose a 100% CBC allocation to certain large commercial rate classes within the Value Stack, which is contrary to the Order.¹² The Whitepaper proposed that the CBC only apply to self-consumed energy under the Value Stack and thus be discounted 50% for residential, and 30% for small commercial standard and TOU customers.¹³ When approving

¹¹ Order at 15 (“As these customers are already subject to demand rates, this option results in minimal or no cost-shifting impacts. These commercial customers receive compensation from Phase One NEM that is much more aligned with utility costs than non-demand metered customers, since the delivery portion of their bill is primarily based on a demand charge that is only reduced by distributed generation to the extent that the generator actually lowers the customer’s demand.”).

¹² Con Edison CBC at Attachment 6; Case 15-E-0751, *supra*, Joint Utilities VDER Rate Design Working Group CBC Presentation (filed March 26, 2021), Slide 5 (“Joint Utilities Presentation”).

¹³ Whitepaper at 29.

Staff's proposed CBC discounts for the Value Stack, the Commission recognized that Value Stack compensation for DER exports is "fully decoupled from the retail rate," and therefore, "does not result in avoided contributions to public benefit programs."¹⁴ The Commission further adopted Staff's estimates for how much generation is consumed on-site and how much is exported to the grid. These estimates formed the basis for the discounted CBC charges applicable to customers electing the Value Stack.

The utilities' proposed rates for certain large commercial rate classes, however, do not reflect the Order.¹⁵ For Con Edison, many of the large commercial rate classes (*i.e.*, Rates 5, 8, 9, and 12), the draft tariffs apply 100% of the CBC charge for Phase One NEM customers to Value Stack customers of the same rate class. To illustrate, the CBC charge for Con Edison SC 5 Rate II is the same for both Phase One NEM and Value Stack customers (\$0.66).¹⁶ The Joint Utilities have not provided adequate reasoning for why these disparities, which contravene the Commission's Order, are present in the proposed tariffs. The Commission was clear that exported generation compensated under the Value Stack does not result in avoided contributions to public benefit programs, and therefore should have a lower CBC than Phase One NEM.¹⁷ The Commission should therefore direct the utilities to revise their tariff filings so that all Value Stack CBC charges reflect the appropriate discount as approved in the Order.

Second, the Joint Utilities include the DLM program as a public benefit program, thereby including DLM program costs in the CBC calculations, despite the fact that the Order does not

¹⁴ Order at 21.

¹⁵ Con Edison CBC at Attachment 6; Joint Utilities Presentation at Slide 5.

¹⁶ Similarly, for example, see Central Hudson's proposed CBC for SC-3, where the same CBC charge is applied to both Phase One NEM and Value Stack customers. Case 15-E-0751, *supra*, Central Hudson CBC Workpapers (filed November 2, 2020).

¹⁷ Order at 21.

reference the DLM in the list of public benefit programs to be included in CBC calculations.¹⁸ The Joint Utilities assume that the DLM is a public benefit program, therefore, the Commission meant to include it in the proposed CBC.

The Commission, however, did not enumerate the DLM program in its list of public benefit programs, which included the low-income program and Clean Energy Fund.¹⁹ Ultimately, the Joint Utilities cannot unilaterally modify the Order via their tariff filings. If the Joint Utilities want to apply a different methodology or include another program into the CBC calculation than what the Commission ordered, the Joint Utilities should petition the Commission for reconsideration of the Order.

POINT V

THE CITY SEEKS CLARIFICATION THAT THE CBC DOES NOT APPLY TO ENERGY STORAGE OR COMMUNITY DISTRIBUTED GENERATION

The applicability of the CBC charge to energy storage resources was not specifically referenced in the Order or the Whitepaper. The City acknowledges that Staff and the Joint Utilities clarified at the March 2021 Working Group session that the CBC does not apply to energy storage resources. As the tariffs stand, however, they do not reflect this common understanding. To eliminate any ambiguity around the applicability of the CBC charge to energy storage, the City therefore requests that, in the case of distributed energy generation paired with energy storage, the

¹⁸ Order at Appendix A; Order at 9, fn. 9.

¹⁹ Joint Utilities Presentation at Slide 5; Con Edison CBC at Attachment 5; Order at 9, fn. 9 (“identifies the public benefit programs funded through volumetric charges, including low-income programs, utility-administered energy efficiency programs, NY-Sun, the New York Green Bank, and other Clean Energy Fund programs.”).

resulting tariffs specify that the CBC charge applies to the capacity rating of the energy generation resource and not the capacity rating of any paired or stand-alone energy storage.

In addition, it is the City’s understanding that the CBC charge is not applicable at all to Community Distributed Generation (“CDG”) projects. The utility tariffs, however, are not entirely clear on this point and to avoid any ambiguity the Commission should explicitly confirm that CDG projects are not subject to the CBC charge.

CONCLUSION

The City appreciates the ongoing effort to achieve the State’s climate goals and encourage greater solar development while mitigating impacts to non-participating customers. For the foregoing reasons, the City respectfully requests the Commission adopt the Joint Utilities’ proposed tariffs subject to the recommended modifications herein.

Respectfully submitted,

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