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January 9, 2015

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

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

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

Dear Secretary Burgess,

On behalf of the Alliance for Clean Energy New York, the New York Solar Energy Industries Association, the Municipal Electric and Gas Alliance, and the New York State Association of Counties, please accept for filing in the above-referenced proceedings the enclosed Petition for Rehearing of the Order Regarding Modifications to Remote Net Metering Tariffs.

Respectfully submitted,

A handwritten signature in cursive script that reads "Anne Reynolds".

Anne Reynolds, Executive Director
Alliance for Clean Energy New York

Encl.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Petition of Hudson Valley Clean
Energy, Inc. for an Increase to the Net
Metering Minimum Limitation at Central Hudson
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Resources Defense Council and The Alliance for
Solar Choice to Clarify the Process for
Utilities to Seek Relief from Net Metering Caps

Case 14-E-0422

**PETITION FOR REHEARING OF ORDER REGARDING
MODIFICATIONS TO REMOTE NET METERING TARIFFS**

The Alliance for Clean Energy New York (ACE NY), the New York Solar Energy Industries Association (NYSEIA), the Municipal Electric and Gas Alliance (MEGA), and the New York State Association of Counties (NYSAC) respectfully submit this Petition for Rehearing of the Order Regarding Modifications to Remote Net Metering Tariffs, as described and directed in the Order Raising Net Metering Minimum Caps, Requiring Tariff Provisions, Making Other Findings, and Establishing Further Procedures, issued on December 15, 2014 in the above-referenced proceedings, pursuant to Rule 3.7 of the New York State Public Service Commission's (Commission) Rules of Practice and Procedure.¹

ACE NY is a coalition of energy industry and environmental interests working together to promote clean energy, energy efficiency, a healthy environment and a strong economy for New York State. NYSAC is the advocate to the executive and legislative branches of government at the state and federal levels for 62 county governments, including the City of New York. MEGA, NYSAC's endorsed energy program for local governments, is a not-for-profit local development corporation established since 1998 by county governments to procure energy supplies and services for municipal and public agencies, as well as other customers. MEGA presently serves more than 260 municipalities and public agencies in energy supply procurement.

¹ 16 NYCRR § 3.7.

NYSEIA is the only statewide solar advocacy group and trade association dedicated solely to advancing the solar energy industry in New York.

The diverse participation in this Petition for Rehearing includes representatives of municipal and county governments, renewable energy and energy efficiency companies, environmental and economic development organizations, academic institutions, and consultants to the energy sector. ACE NY has been active in both legislative initiatives and Commission proceedings regarding net metering for many years. Member companies and organizations of ACE NY and NYSEIA, and participants in the NYSAC and MEGA energy programs, have significant concerns with the Commission's recent directive regarding remote net metering (RNM), and believe it is necessary and appropriate for the Commission to provide ample public notice and an opportunity for public comment on this major policy change before it takes effect.

Among the entities affected by the Order are more than 25 municipalities and public agencies represented by MEGA and NYSAC that have procured a remote net metered solar or hydroelectric project through MEGA's statewide competitive procurement conducted in late 2013 and concluded in early 2014. This cohort alone represents upwards of 40 MW of new renewable energy generating capacity that is at risk of cancellation if the Commission implements the Order without further grandfathering or further review.

Background

On December 15, 2014, the Commission issued the Order Raising Net Metering Minimum Caps, Requiring Tariff Revisions, Making Other Findings, and Establishing Further Procedures (Order). The Order was issued in response to the two petitions² regarding net metering referenced above, both of which focused solely on the net metering caps in New York's six electric utility territories. Comments received on these two petitions brought up other issues, summarized by the Commission in the Order on page 3, as "whether each of multiple but contiguous 2 MW solar array configurations may be remote net metered separately, how the costs of system upgrades incurred to connect NEM projects ought to be determined and allocated, and how current NEM projects will be treated upon a transition to successor tariffs." This list does not include the issue of monetary vs. volumetric crediting for non-demand remote net metered locations.

The Commission identified the current valuation of RNM credits as an issue that needed to be addressed, although the issue was not raised in the original petitions or by commenters to the petitions. The Order includes a section titled *Non Demand Rates at Remote Net Metered Locations* that describes a practice of customers locating generation behind non-demand meters, converting the kWh of production over consumption at these non-demand host locations to monetary credits, and then distributing these monetary credits to satellite meters elsewhere, a

² Petition of Hudson Valley Clean Energy, Inc. for an Increase to the Net Metering Minimum Limitation at Central Hudson Gas & Electric Corporation (Case 14-E-0151) and Petition of Solar Energy Industries Association, Alliance for Clean Energy New York, the Vote Solar Initiative, the Natural Resources Defense Council and The Alliance for Solar Choice to Clarify the Process for Utilities to Seek Relief from Net Metering Caps (Case 14-E-0422).

practice that was allowed in remote net metering arrangements under PSL §66-j(3)(f) and as specified in the Order Modifying and Authorizing Remote Net Metering Tariffs, Modifying Standardized Interconnection Requirements, and Requiring Micro-Hydroelectric and Fuel Cell Tariff Filings, issued November 21, 2011.³

The December 15th Order directs utilities to restructure their tariffs to substitute volumetric crediting for monetary crediting. However, in recognition that customers and developers have pursued remote net metered facilities on the basis of the existing tariff policies, the Order includes some limited grandfathering. Per the Order, situations subject to grandfathering include: successful participants in recent NYSERDA PV PONs under NY-Sun referenced in the Order and the Erratum⁴ (which therefore would not include any non-solar technologies); existing remote net metered facilities; and, customers that have entered into binding interconnection agreements for remote net metering that have been queued by utilities as of December 11, 2014. These limited circumstances would not grandfather numerous renewable energy projects across the state that are in the late stages of development but do not have binding interconnection agreements or meet the other limited criteria enumerated in the Order.⁵ This universe of non-grandfathered projects includes projects that have been involved in costly competitive procurement processes with public and private customers; those that have customer or landowner commitments in place;⁶ those that participated in the referenced NYSERDA PONs but were not awarded incentives due to uncompetitive bid prices rather than lack of project maturity; and others that have engendered significant financial investments by developers and customers. This universe could include the full range of technologies eligible for net metering, including solar PV, distributed wind, micro-hydro, and fuel cell projects.

Requested Actions

1. The Parties Request that the Commission Issue a Notice Soliciting Comments, Commence Public Comment Period, and Stay Implementation of Tariff Revisions Regarding RNM

In the Order, the Commission directs electric utilities to file tariffs that substitute volumetric crediting for monetary crediting at non-demand remote net metered locations. This action is a considerable departure from the current practice of permitting remote net metered

³ Order Modifying and Authorizing Remote Net Metering Tariffs, Modifying Standardized Interconnection Requirements, and Requiring Micro-Hydroelectric and Fuel Cell Tariff Filings (Issued and Effective November 21, 2011) in Case 11-E-0318 – Central Hudson Gas and Electric Corporation; Case 11-E-0319 – Consolidated Edison Company of New York Inc., Case 11-E-0320 – New York State Electric & Gas Corporation, Case 11-E-0321 – Niagara Mohawk Power Corporation d/b/a National Grid, Case 11-E-0322 – Rochester Gas and Electric Corporation, Case 11-E-0323 – Orange and Rockland Utilities, Inc., all Tariff Filings to Effectuate Amendments to Public Service Law §66-j and §66-l (Remote, Micro-hydroelectric, and Fuel Cell Net Metering) and Conforming Changes to Standardized Interconnection Requirements.

⁴ Erratum Notice, issued December 16, 2014 in Case 14-E-0104 and Case 14-E-0422.

⁵ It is unclear from the Order whether the use of the term “and” is meant to require that *each* of the enumerated criteria must be met, or rather that each criteria is an *independent* basis for qualifying a project for grandfathering.

⁶ The limited exception is the competitive solicitation conducted by New York City related to the Fresh Kills landfill in Staten Island, which the Commission recognized for grandfathering (Order at p. 24). Other municipalities have been engaged in competitive solicitations as well.

customers to convert the kWh exceedances of renewable energy production over consumption at non-demand host locations to monetary credits, which may then be distributed to satellite meters elsewhere. The Parties request that the Commission stay implementation of any revisions to the utility tariffs regarding RNM to allow for a public comment period on this policy change, particularly with respect to the grandfathering of projects under development that would be affected by this change.

The significant changes to the way production at remote net metered sites is credited, as envisioned in the Order, warrant the opportunity for public comment. Section 3.7 of the Commission's rules provides that any person may seek rehearing "on the grounds that the Commission committed an error of law or fact or that new circumstances warrant a different determination." In the instant matter, neither of the recent net metering petitions addressed RNM, and the modifications were made without any public notice being published pursuant to the State Administrative Procedures Act. However, as recognized by the Commission, a new crediting policy has the potential to harm developers throughout the market. Thus, the Commission committed an error of law by failing to provide notice and opportunity for comment on the significant change it effectuated with regard to the economic valuation of net metering credits from RNM sites. Further, the information submitted herein regarding the potential market disruption resulting from the changes related to RNM crediting in the Order are new circumstances that warrant consideration.

Because the RNM changes in the Order have a broad and immediate impact on the market, the renewable energy community and other stakeholders deserve the opportunity to provide input to the Commission to explain the potential business impacts and put forward views with respect to grandfathering provisions. By offering the opportunity for public comment, the Commission can have additional information to inform its decision, and could potentially take action to reduce the dramatic disruption in the project development queue and avoid the undesired consequence of penalizing renewable energy developers, for a range of technologies, as well as communities and customers that have been pursuing projects, and making project investments, in good faith.

For example, NYSAC and MEGA have over 25 member municipalities and counties that have made material investments in time and money in almost 40 MW of solar PV and small hydro projects that will become uneconomical. These projects represent millions of dollars in investment and are in the late stages of development, but do not satisfy the grandfathering provisions in the Order and will therefore fail because they are no longer viable at the revised RNM tariff rate.⁷ Some projects are also detrimentally affected by the Order's restriction requiring that the host meter attributable to a given customer be located on a separate real estate parcel from any other host meter attributable to any other given customer. Based on input from Petitioners' member companies and municipalities, there are numerous other affected projects

⁷ We note here that the NYSERDA program currently under development to provide a decreasing MW block incentive structure for PV systems over 200 kW includes incentives based on calculations that rely, in part, on the results of the most recent NYSERDA solicitation (for which numerous awarded projects were RNM) and assume that the RNM structure prior to the Order remains in place; no adjustments have been made to the NYSERDA proposal on the basis of the most recent PSC Order.

under development statewide that have been pursued in good faith and are detrimentally affected by the Order.

In the Order, the Commission states, on page 28, “Again, however, net metering developers that have pursued installation of their facilities in good faith should not find their financial expectations disrupted by a change in policy.” The changes included in the Order do in fact disrupt the financial expectations of municipalities and other customers, as well as developers of solar, small hydro and other renewable energy installations, who have hired New York-based employees, rented local offices, and invested millions in pre-interconnection development costs. Modifying the grandfathering provisions of the Order could reduce the financial losses of developers, communities, and other stakeholders that have made considerable investments in the state’s clean energy future. It will also send a message to future investors and developers that New York is a stable and predictable business environment, rather than high risk and unpredictable.

On rehearing, the Commission should also take into consideration the potential impact of this material change in net metering credit value on the achievement of the state’s ambitious NY-Sun goals and broader energy infrastructure goals. NYSERDA reports that over 80% of projects awarded incentives in the most recent PON were configured as RNM sites. While these projects are grandfathered under the Order, Petitioners submit that the pipeline of advanced-stage projects feeding future solar growth in the state will be severely affected by this decision.

2. Pursue Technology-Neutral Community Net Metering Program

While the Parties welcome the Commission’s directive to Department of Public Service Staff to consult with NYSERDA, the utilities, and other interested stakeholders on the development of policies to facilitate community net metering for shared solar projects, we request that the Commission consider a technology-neutral program in the alternative. A technology-neutral community net metering program, open to all technologies currently eligible for net metering in New York, would be more in keeping with the stated goals and principles of the Reforming the Energy Vision initiative, and could offer opportunities to other technologies currently eligible for net metering, such as distributed wind, micro-hydro, and fuel cells. It could also broaden the options and opportunities for customers or groups of customers interested in pursuing shared renewables facilities.

Conclusion

Granting these requests will ensure that developers that pursued projects in good faith are not unduly harmed by the Commission’s change in RNM policy, and thereby ensure that New York provides a stable business environment to support the increased use of clean distributed generation technologies. Commission approval of these requests should also give equal consideration to the variety of cost-effective renewable energy technologies available to help meet the state’s energy, environmental, and economic goals. Local government support for and involvement in innovative Commission programs in the future will depend on remaining

confident that such programs will be established and maintained absent the risk of major changes being implemented without notice and opportunity for public input.

Respectfully submitted on the 9th day of January, 2015.

Anne Reynolds, Executive Director
Alliance for Clean Energy New York

Peter Olmstead, President
New York Solar Energy Industries Association

Gordon Boyd, representing the
Municipal Electric and Gas Alliance

Stephen J. Acquario, Executive Director
New York State Association of Counties