

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on June 14, 2012

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman
Patricia L. Acampora
Maureen F. Harris
Robert E. Curry, Jr.
James L. Larocca

CASE 12-E-0105 - Hudson Valley Clean Energy, Inc. - Petition For
an Order Requiring New York State Electric &
Case Corporation to Modify its Tariffs for the
Net Metering of Residential Solar Generation
Facilities.

ORDER GRANTING PETITION AND
DIRECTING TARIFF FILINGS

(Issued and Effective June 18, 2012)

BY THE COMMISSION:

BACKGROUND

In a petition filed on March 5, 2012, Hudson Valley
Clean Energy, Inc. (HVCE) maintains that New York State Electric
& Gas Corporation (NYSEG) has tariffed a restriction on the net
metering of residential solar photovoltaic (PV) electric
generation facilities that is outside the ambit of the
eligibility requirements for net metering established under
Public Service Law (PSL) §66-j. As HVCE describes the
restriction, NYSEG insists that PV generation may be net metered
only at a "primary, legal" residence. HVCE believes that PSL
§66-j permits net metering of residential PV generation at any
residence.

In conformance with State Administrative Procedure Act
(SAPA) §202(1), notice of the petition was published in the

State Register on April 4, 2012. The SAPA §202(1)(a) period for submitting comments in response to the notice expired on May 21, 2012. The New York Energy Research and Development Authority (NYSERDA) and other commentators timely submitted comments in support of HVCE, while NYSEG timely commented in opposition to the requested relief.

POSITIONS OF THE PARTIES

HVCE's Petition

HVCE begins by describing itself as a designer and installer of solar PV electric systems in New York. HVCE complains that NYSEG has denied net metering to some residential customers on the grounds that the PV system would not be located at the customer's "primary, legal" residence. While conceding that NYSEG has tariffed the restriction, HVCE argues that the tariff does not comply with the requirements of PSL §66-j.

HVCE points out that NYSEG's "primary, legal" restriction is not mentioned in the statute. As HVCE reads it, the statute permits net metering of solar PV generation at any residence. HVCE also complains that NYSEG has been unable to establish consistent standards for distinguishing between a "primary, legal" residence and other types of residences, and that, even though the restriction has been in effect for some time, NYSEG only recently commenced seeking to enforce it.

Describing NYSEG's restriction as a step backwards, HVCE contends that it prevents net metering of solar PV generation at locations like vacation homes and rental properties. Arguing that the restriction is contrary to New York energy policy, HVCE deems the restriction inconsistent with recently-announced initiatives intended to double the number of customer-sited solar generation installations, and with long-standing policies progressively adopted to expand net metering

opportunities. Consequently, HVCE asks that NYSEG be directed to remove from its tariff the "primary, legal" residence restriction.

NYSERDA's Comment

NYSERDA agrees with HVCE that NYSEG's "primary, legal" residence restriction is not justified under PSL §66-j. NYSERDA is concerned that undue restrictions on eligibility for the net metering of residential PV generation systems may make it more difficult and expensive to meet New York's solar generation goals. NYSERDA would substitute for the utility's restriction the definition of a residential customer set forth at 16 NYCRR §11.3(2), the regulations implementing the Home Energy Fair Practices Energy Act (HEFPA)(PSL §§30-53). There, a residential customer is defined as any person who is supplied with electric service, pursuant to an application for such service, at a premises that is "in whole or in part...his or her residence."

Other Comments in Support of HVCE

The Alliance for Clean Energy New York, Inc. GreenLogic LLC, the New York Solar Energy Industrial Association, SolarCity and Solar Energy Systems LLC (collectively, the Supporting Commentators) ask that the relief HVCE requests be granted. The Supporting Commentators contend that the language of PSL §66-j providing for residential PV net metering is intended only to distinguish residential locations from commercial locations, not to restrict the installation of PV generation facilities to certain types of residential locations. Consequently, they maintain NYSEG's "primary, legal" restriction violates both the letter and intent of PSL §66-j, and, they add, the restriction is neither logical nor enforceable. They also reiterate HVCE's argument that the restriction contradicts New York's energy policies favoring the development of additional PV generation resources.

Rochester Gas and Electric Corporation (RG&E), the Supporting Commentators continue, tariffs the same "primary, legal" restriction on the net metering of residential PV generation as NYSEG requires. Maintaining that the utilities' restrictions can unfairly deprive customers of the benefits of PV net metering, the Supporting Commentators ask that both utilities be directed to promptly revise their tariffs to remove the restriction.

NYSEG's Response

Emphasizing that its "primary, legal" restriction is of long standing, NYSEG asserts that it has been in place since 1998, when tariffs implementing PV net metering first took effect.¹ NYSEG believes that its restriction comports with the statutory intent underlying PSL §66-j, which it interprets as intended to benefit customers taking year-round service at their primary residence, and not as intended to benefit customers at residences that are occupied only seasonally or periodically.

NYSEG also maintains that it has applied its restriction fairly and uniformly. The utility explains that, following an application for installation of PV net metering at a residence, it verifies with the installer of the PV electric generating system that the residence is, in fact, a primary residence. If the installer cannot furnish the requisite verification, the utility continues, the customer is denied permission to proceed with net metering.

Disputing the contention that its restriction unreasonably obstructs the installation of net metered PV generation, NYSEG declares it has spent a great deal of time and

¹ Case 97-E-1966, New York State Electric & Gas Corporation, et al., Order on Net Metering of Residential Photovoltaic Generation (issued February 11, 1998) and Order Denying Rehearing and Modifying Net Metering Tariffs (issued July 28, 1998).

effort in assisting customers seeking net metering. In support of its argument, NYSEG reports that in 2011 it and RG&E together connected a total of 239 small generation projects to their grids. NYSEG also notes that, between the inception of PV net metering and the end of 2011, it had interconnected a cumulative total of 952 solar PV projects, while RG&E had interconnected 110 projects. Maintaining that the customers denied net metering because they do not meet the primary residence requirement is a very small percentage of those applying, NYSEG asserts that its tariff is in compliance with §66-j and properly implements New York policies for promoting solar generation.

DISCUSSION AND CONCLUSION

HVCE's petition is granted. PSL §66-j(1)(a)(i) opens eligibility for net metering of solar PV generation to any residential customer installing a PV facility of 25 kW or less "at his or her" residence. As HVCE and its supporters contend, the statute nowhere restricts the type of residence where residential PV net metering may take place to a "primary, legal" residence.² In comparison, the net metering of residential wind generation authorized at PSL §66-l(1)(b) is restricted to a "primary" residence. That the Legislature did not explicitly provide for a "primary" residence restriction when authorizing residential PV net metering indicates that it intended such a restriction to apply only to residential wind generation facilities and not to residential PV generation facilities. Moreover, it does not appear that any utility other than NYSEG and RG&E interprets PSL §66-j as imposing a primary residence eligibility requirement on customers seeking to net meter residential PV generation.

² NYSEG tariffs its restriction at PSC No. 120, Leaf No. 117.31; the RG&E restriction is found at PSC No. 19, Leaf No. 160.39.

Therefore, the restriction NYSEG and RG&E tariff limiting net metering of residential solar PV generation to "primary, legal" residences goes beyond the requirements of PSL §66-j. Absent a statutory requirement, NYSEG's justifications for continuation of the restriction are unpersuasive, whatever the reason that might have justified its tariffing initially.³ In addition, the opponents of the restriction have demonstrated that retaining it poses an obstacle to achieving New York's solar generation goals. Consequently, NYSEG and RG&E shall allow residential customers, as defined in their tariffs,⁴ to net meter PV generation at any residence where such a customer resides, by promptly revising their tariffs to remove the "primary, legal" residence restriction, effective as of July 1, 2012.

The Commission orders:

1. New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation are directed to remove the restriction on net metering of residential solar photovoltaic generation to "primary, legal" residences from their tariffs in accordance with the discussion in the body of this Order, by filing the necessary tariff revisions no later than June 27, 2012 to become effective on July 1, 2012.

2. The requirements of §66(12)(b) of the Public Service Law, as to newspaper publication of the tariff amendments required in Ordering Clause No. 1, are waived.

³ No justification for the restriction is discussed in the 1998 Orders that NYSEG cites.

⁴ Both NYSEG and RG&E already tariff, at the leaves cited above, the HEFPA definition of a residential customer that NYSERDA recommends for use in determining eligibility for residential PV net metering; that definition will adhere unimpeded once the "primary, legal" restriction is removed.

3. The deadlines provided for in this Order may be extended as the Secretary may require.

4. This proceeding is continued but shall be closed by the Secretary after the filing required by Ordering Clause No. 1 has been received, unless the Secretary finds good cause to continue this proceeding further.

By the Commission,

(SIGNED)

JACLYN A. BRILLING
Secretary