

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on May 16, 2019

COMMISSIONERS PRESENT:

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

CASE 19-E-0079 - In the Matter of the Continuation of Standby
Rate Exemptions.

ORDER CONTINUING STANDBY RATE EXEMPTIONS

(Issued and Effective May 16, 2019)

BY THE COMMISSION:

INTRODUCTION

On February 12, 2019, the Secretary to the Public Service Commission (Commission) issued a Notice Initiating Proceeding and Soliciting Comments (Notice) to consider whether previously established temporary exemptions from Standby Service delivery rates (standby rates) should be extended beyond May 31, 2019. These exemptions apply to certain distributed energy resources (DERs) with a capacity of 1 Megawatt (MW) or less, including fuel cells, wind, solar thermal, solar photovoltaic, biomass, tidal, geothermal, and methane waste-powered generation resources, and efficient combined heat and power (CHP) projects.¹

¹ The thermal and electrical efficiency requirements were established in Case 02-E-0551, et al., Filings to Establish New Standby Services, Order Directing Modifications to Standby Service Tariffs (issued January 23, 2004). At certain utilities, the standards have been subsequently modified as part of a rate proceeding.

This voluntary exemption allows the customer to pay standard delivery rates instead of standby delivery rates, on a permanent basis, for usage in excess of production by the exempt generator, provided that the generator entered into service prior to the deadline established by the Commission. A more limited exemption applies to efficient CHP projects with a capacity between 1 MW and 15 MW, allowing the customer to pay standard delivery rates instead of standby delivery rates for the first four years following the project's installation.

The exemptions from standby rates have been extended periodically, with the most current extension to May 31, 2019 being granted in the 2015 Exemption Order.² Further, in the 2015 Exemption Order, the Commission provided a limited exemption of up to four years for CHP facilities with a capacity greater than 1 MW but less than 15 MW. These exemptions are applicable to customers in the Central Hudson Gas & Electric Corporation (Central Hudson); Consolidated Edison Company of New York, Inc. (Con Edison); New York State Electric & Gas Corporation (NYSEG); Niagara Mohawk Power Corporation d/b/a National Grid (National Grid); Orange and Rockland Utilities, Inc. (O&R); and, Rochester Gas & Electric Corporation (RG&E) service territories.³

This Order continues the existing statewide exemptions from standby rates, and extends the in-service date deadline for eligible DERs until May 31, 2021, without modification to other

² Case 14-E-0488, Standby Rate Exemptions, Order Continuing and Expanding the Standby Rate Exemption (issued April 20, 2015) (2015 Exemption Order).

³ Central Hudson, Con Edison, NYSEG, National Grid, O&R, and RG&E collectively make up the Joint Utilities.

terms of the existing exemptions to standby rates.⁴ The Commission has initiated significant development toward a more accurate and granular set of standby rates through the concurrent order in the Value of Distributed Energy Resources (VDER) proceeding.⁵ This two-year continuance will provide time for new, better-designed standby rates to be implemented and will ensure timely consideration of the continued need for exemption from such rates.

BACKGROUND

Standby rates apply to customers whose electricity requirements are partly self-supplied through on-site generation. The beneficial distributed generation (DG) and efficient CHP exemptions to standby rates were granted "upon a showing that the number and magnitude of DG installations was growing only slowly and the availability of rate options was needed to assist in that development."⁶ In its periodic reevaluation of the exemption, the Commission examines the effect of the exemption on the promotion of DG development as well as its impact on other ratepayers, who may be exposed to higher costs if DG customers avoid standby rates that would more accurately charge them for the costs of electric service.

⁴ This Order does not extend or amend in any way the up to 10-year Targeted Exemption in place at Con Edison, which was implemented as part of the Joint Proposal resulting from that Company's 2016 Electric Rate Proceeding in Case 16-E-0060.

⁵ Case 15-E-0751, Value of Distributed Energy Resources, Order on Standby and Buyback Service Rate Design and Establishing Optional Demand-Based Rates (issued May 16, 2019) (Standby and Buyback Rate Design Order).

⁶ Case 09-E-0109, Continuation of Standby Rate Exemptions For Beneficial Distributed Generation, Order Continuing and Modifying in Part the Standby Rate Exemption (issued May 18, 2009) (2009 Exemption Order).

To track the growth of the DG industry, the 2009 Exemption Order directed each of the Joint Utilities to file an annual report, by August 1 of each year, that listed: 1) each DG customer that availed itself of the exemption and its size; 2) each DG customer that was eligible for the exemption but selected standby rates instead, and its size; 3) each DG customer, sized from more than 1 MW to 5 MW, that would have qualified for the exemption, but for its size, and each such customer's size; and, 4) cumulating, for each DG customer category, the total number of DG customers and magnitude of DG installations over the annual period since inception of the exemption.

NOTICE OF PROPOSED RULE MAKING

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rulemaking was published in the State Register on February 27, 2019 [SAPA No. 19-E-0079SP1]. The time for submission of comments pursuant to the Notice expired on April 29, 2019. Moreover, the Secretary's Notice also requested comments by April 29, 2019 on the need for exemption from, or options under, Standby Rates to promote development of DER and CHP projects. The Notice invited comments regarding how long such exemptions should remain available prior to re-evaluation by the Commission. The Notice requested that commenters consider the need to balance the interests of developers and ratepayers. The comments received are addressed below.

COMMENTS

Comments were received from eleven parties: the Joint Utilities of New York (Joint Utilities); the City of New York (City); the Northeast Clean Heat and Power Initiative (NECHPI);

Multiple Intervenors (MI); the National Fuel Cell Research Center (NFCRC); Aegis Energy Services, LLC (Aegis); Bloom Energy Corporation (Bloom Energy); Pace Energy and Climate Center (Pace); National Fuel Gas Distribution Corporation (NFG); the Fuel Cell and Hydrogen Energy Association (FCHEA); and, Doosan Fuel Cell America, Inc. (Doosan). The City, Bloom Energy, Aegis, NFCRC, FCHEA, and NFG each provided several off-topic comments that will not be addressed in this Order.⁷

The commenters unanimously support the extension of the current exemption for certain forms of DG and small CHP units up to 1 MW until such time that standby rate designs are formalized. Commenters suggest extending the current exemptions for two years, as suggested the Joint Utilities; four or five years as recommended by Bloom Energy, NFCRC, NECHPI, the City, Doosan, and FCHEA; or even until 2030 as recommended by NFG. Aegis, Pace, and MI suggest extending such exemptions indefinitely until the Commission approves new redeveloped standby rates. Aegis and NFG further recommend total suspension

⁷ The City requests certain modifications to Con Edison's steam tariff to allow exemptions to steam standby rates. The City's comments in this matter will not be directly addressed herein, but will instead be considered as comments to Case 18-M-0739 wherein the Commission is considering a petition regarding steam standby rate exemptions filed by the New York City Health and Hospitals Corporation. Bloom Energy, Aegis, NFCRC, and FCHEA's comments are related to behind-the-meter fuel cells' lack of inclusion in Clean Energy Standard incentive programs, lack of compensation under the Value Stack tariffs for behind-the-meter resources, and the lack of certainty for incentive funding from a Clean Energy Fund program which is scheduled to close at the end of 2019. While NFG states that CHP facilities are unable to sell excess electricity generation back to the grid, this fails to recognize that CHP facilities are eligible to participate in utility Buyback Service. Regardless, these comments are beyond the scope of the SAPA notice and will not be addressed in this proceeding.

of Standby Rates until such rates are redesigned, and complete elimination of the Standby Rate structure, respectively.

Most of the comments submitted also support the extension of the current exemptions for CHP units greater than 1 MW and less than 15 MWs, though the Joint Utilities oppose such extension. The Joint Utilities argue that any subsidy from other customers to support CHP facilities greater than 1 MW is unwarranted, since value stack compensation for excess CHP generation was not provided in the VDER Proceeding. The Joint Utilities further argue that CHP customers do not need an exemption from Standby Rates, since such rates are not the only barrier faced by CHP projects, and that the Commission's 2015 Exemption Order intended for these exemptions to be finite.

MI requests that the Commission expand the existing Standby Rate exemptions from the current set of designated technologies to include all types of DERs. MI posits that technology-specific exemptions may be discriminatory, and that limiting exemptions to specific technologies is not cost-justified. MI argues that Standby Rates are inherently flawed because such rates may result in a higher bill than standard rates for a customer that installs DER.

DISCUSSION AND CONCLUSION

When the Commission last extended the statewide exemptions to standby rates in 2015, it did so with the expectation of significant reform to standby rates themselves during the four-year period of the exemption. As noted by the Joint Utilities, several incremental improvements to standby rates have been approved during the intervening time. However, the overall landscape for DERs that would otherwise take service under Standby Rates remains much the same in early 2019 as it was during 2015. Although the Standby and Buyback Rate Design

Order directs significant improvements to standby rates, it will take additional time for those improvements to result in final tariffs. Therefore, the Commission will apply a balanced approach by continuing the current set of statewide standby rate exemptions for an additional two years. The Commission will not require any other modification beyond the in-service date deadline for these exemptions, including the duration of the limited four-year exemption for CHP facilities greater than 1 MW and less than 15 MWs. Therefore, Central Hudson, Con Edison, NYSEG, National Grid, O&R, and RG&E are directed to file tariff amendments in compliance with this Order to be effective June 1, 2019, extending the in-service date deadline for these exemptions for an additional two years to May 31, 2021. The annual reporting requirements from the 2015 Exemption Order are similarly continued, and henceforth shall be filed in this proceeding.

The Commission recognizes that rate certainty remains critical to the development of DG and CHP projects throughout New York. Although the longer exemption durations proposed by many commenters, to 2024, 2030, or even indefinitely, would provide additional rate certainty during that period, such certainty must also be balanced with timely review of the appropriateness of exemptions to standby rates in the context of the redesigned rates and requirements. The two-year extension provided herein will ensure that the need for these exemptions will be investigated again in a timely manner, with the expectation that the standby rates available at that time will have been redesigned and that the duration of such exemption will not persist beyond its need.

Although the Commission recognizes that the current standby rate design is in need of improvement, the rates as currently designed are just and reasonable, and do reflect a

cost-basis. Therefore, the Commission declines to eliminate or wholly suspend standby rates as proposed by several commenters, and, further, declines to expand the exemptions to standby rates beyond the currently-exempt technologies as requested by MI. MI's argument that customer bills under standby rates should always be lower than bills under standard rates is flawed. While standby rates are specifically designed to ensure that customers pay for the customer-related, local costs, and shared costs of serving that customer, they are also designed, like the rates of all other rate classes, based on the load characteristics of the class and not any one specific customer. Therefore, when making a transition to a new rate design, like the standby rates, there will always be customers with higher bills and lower bills, with all else being equal.

As noted in the Notice, offering such exemptions to customers does have the potential for non-participating customer bill impacts, as such non-participating customers may pay a share of customer-specific costs that are not collected from customers taking exemptions to standby rates. These bill impacts from exempt customers to non-participating customers is tolerated not solely on cost-justification principles, but also for public policy reasons. Therefore, it is reasonable to provide continued exemptions to standby rates as a method for reducing barriers for certain DERs for which a need has been demonstrated and where continued development of those DERs advance New York's policy goals.

The Commission does not find the Joint Utilities' argument that there is no basis for continuing the exemption for CHP facilities between 1 MW and 15 MW to be compelling. Continuing the current status quo for those resources during the period of standby rate adjustment is appropriate, particularly given the limited nature of the exemption and the small number

of resources that have taken advantage of the exemption thus far. Further, compensation for excess generation from a particular technology and the delivery rates customers pay when they install such technology are separate topics that need not always be linked.

The Joint Utilities' argument that the Commission should not extend this exemption because Standby Rates may be one of many barriers faced by these projects is similarly flawed. The Commission recognizes that there are other potential barriers beyond Standby Rates that these CHP facilities must overcome, as evidenced by a relative lack of development for these projects during the current period of the exemption.⁸ The presence of other barriers is not a persuasive reason for the Commission not to act to reduce the barriers within its control.

With respect to the tariff changes directed in this Order, the requirement for newspaper publication is waived given the limited applicability of those changes and the fact that they maintain the status quo.

The Commission orders:

1. 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 & Rockland Utilities, Inc., and Rochester Gas & Electric Corporation are directed to file tariff amendments implementing the continued exemptions, as discussed

⁸ Based on the annual reports submitted by the utilities each August, only four facilities statewide have been built and taken advantage of this exemption between its authorization in August of 2015 and the most recent report filed in August of 2018.

in the body of this Order, on not less than one day's notice to become effective June 1, 2019.

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 & Rockland Utilities, Inc., and Rochester Gas & Electric Corporation shall file annual reports on customers receiving the standby exemption in Case 19-E-0079, as previously required in Case 14-E-0488, consistent with the discussion in the body of this Order.

3. The requirements of Public Service Law §66(12)(b) and 16 NYCRR §720-8.1 as to newspaper publication of the changes proposed by the tariff amendments required in Ordering Clause No. 1 are waived.

4. In the Secretary's sole discretion, the deadlines set forth in this order may be extended. Any request 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 affected deadline.

5. This proceeding is closed pending compliance with the above Ordering Clauses.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS
Secretary