STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on July 12, 2018

COMMISSIONERS PRESENT:

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

CASE 15-E-0302 – Proceeding on Motion of the Commission to Implement a Large-Scale Renewable Program and a Clean Energy Standard.

CASE 15-E-0751 – In the Matter of the Value of Distributed Energy Resources.

ORDER PROVIDING LIMITED MODIFICATION TO CERTIFICATE BANKING RESTRICTIONS

(Issued and Effective July 16, 2018)

BY THE COMMISSION:

INTRODUCTION AND BACKGROUND

On August 1, 2016, the Public Service Commission (Commission) established the Clean Energy Standard (CES) and adopted an enforceable goal that, by 2030, 50% of the electricity consumed by New Yorkers be generated by renewable sources (the 50 by 30 goal).[1] Under the CES Framework Order, each load-serving entity (LSE), including the electric distribution utilities, is required to serve its retail customers by procuring new renewable resources equal to a

[1] Case 15-E-0302, et al., Large-Scale Renewable Program and a Clean Energy Standard, Order Adopting a Clean Energy Standard (issued August 1, 2016) (CES Framework Order).

specified percentage of its load each year, evidenced by the procurement of qualifying Generation Attribute Certificates representing renewable energy generation (commonly called Renewable Energy Certificates or RECs).

LSEs can procure RECs from a variety of sources, including directly from generators or from the New York State Energy Research and Development Authority (NYSERDA), which conducts regular procurements for RECs from new renewable resources. In addition, the Commission established in the Value of Distributed Energy Resources (VDER) proceeding that electric distribution utilities shall offer compensation, through their Value Stack tariffs, to eligible distributed energy resources (DERs).[2] Where generators accept this compensation, which includes, in part, the environmental value, the distribution utilities receive the associated RECs that are created.[3] RECs acquired from DERs through the Value Stack or Phase One NEM tariff (VDER RECs) may be used to meet the CES obligation of the acquiring utility, but are non-transferrable.

The CES Phase 1 Implementation Plan Order permitted LSEs to bank RECs for use in the future years, but set the limit for the banking of Tier 1 RECs each year at 60% of that year's requirement, due to the relatively small compliance obligation

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2 Case 15-E-0751, et al., In the Matter of the Value of Distributed Energy Resources, Order on Net Energy Metering Transition, Phase One of Value of Distributed Energy Resources, and Related Matters (issued March 9, 2017), p. 62. (VDER Phase One Order).

3 The electric distribution utilities also receive RECs from eligible Community Distributed Generation projects compensated under Phase One Net Energy Metering (NEM), except for projects that elect to opt-out and retain the RECs for their customers.

imposed on the LSEs for the near term.[4] Thus, an LSE that acquired RECs equal to more than 160% of its requirement in a given year would be able to satisfy 100% of its REC compliance obligation for that year and bank an additional 60% of the RECs for the following year, but would forfeit any remaining RECs.

The CES Phase 2 Implementation Plan Order revised the Renewable Energy Standard (RES) Tier 1 LSE obligations for 2018 through 2021.[5] The revision was based on the expected three-year development and construction cycle between the receipt of an award for Tier 1 RECs and a facility's ability to start producing RECs upon commercial operation.

On December 18, 2017, the Joint Utilities (JU) submitted a Petition for Clarification (Joint Utilities Petition) regarding the CES Phase 2 Implementation Order.[6] The Joint Utilities Petition explained that, as a result of the reduction in the Tier 1 obligations in that Order and the number of VDER RECs that members of the Joint Utilities expected to receive, members of the JU were likely to acquire VDER RECs equal to more than 160% of their Tier 1 obligations in some of the years between 2018 and 2021. Based on the existing rules, those additional RECs would be forfeited. However, because the

[4] Case 15-E-0302, supra, Order Approving Phase 1 Implementation Plan (issued February 22, 2017), p. 32 (CES Phase 1 Implementation Plan Order).

[5] Case 15-E-0302, supra, Order Approving Phase 2 Implementation Plan (issued November 17, 2017), p. 4. (CES Phase 2 Implementation Plan Order).

[6] The Joint Utilities include 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. (Orange & Rockland), and Rochester Gas and Electric Corporation (RG&E).

cost estimates in the VDER Phase One Order were based on an assumption that all RECs received would be used for CES compliance, this would result in additional costs to ratepayers. The Joint Utilities Petition requests that the Commission address this issue by lifting the current restriction on transfers of VDER RECs among compliance entities and eliminating the 60% restriction on the banking of RECs through 2022.

By this Order, the Commission grants the Joint Utilities Petition in part by suspending the 60% cap on banking of VDER RECs through 2022. This suspension of the REC banking cap only applies to VDER RECs, and does not apply to other Tier 1 RECs. As this fully addresses the risk of forfeited VDER RECs and resulting costs to ratepayers, the request to lift the restriction on transfers of VDER RECs is denied.

SUMMARY OF JOINT UTILITIES PETITION

The Joint Utilities support the reduced REC obligations adopted in the CES Phase 2 Implementation Plan Order due to the uncertainty of availability of near-term Tier 1 RECs, stating that if fewer RECs were available than needed, LSEs, and ultimately their ratepayers, would pay a 10% compliance premium as a result of the requirement to pay an Alternative Compliance Payment (ACP) if the requirement exceeds available RECs.

The Joint Utilities acknowledge that the exact volume of VDER RECs is uncertain and forecasts are insufficiently reliable to establish compliance obligation levels. However, they assert that the anticipated quantity of VDER RECs received by each LSE will be greater than the compliance obligations for each respective LSE for part or all of the period 2018 through 2021, resulting in the loss of value for the remaining RECs above the 60% banking limit. To correct this problem, the Joint Utilities request that the Commission allow trading of VDER RECs among compliance entities and unlimited banking of VDER RECs through 2022. The Joint Utilities estimated 893,000 RECs would be forfeited by 2021, creating approximately $20.7 million in incremental costs for customers state-wide, unless the requested changes are made.[7]

The Joint Utilities argue that lifting the restriction on the transferring of RECs among compliance entities would allow the REC market to balance itself while quantities of RECs remain relative low and uncertain, and would permit VDER RECs to be more fully integrated into the compliance process. Additionally, the Joint Utilities suggest elimination of the 60% restriction on the banking of VDER RECs through 2022, when annual compliance obligations will begin ramping up as a result of new large-scale resources entering service.[8]

NOTICE OF PROPOSED RULE MAKING

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rulemaking (SAPA Notice) was published in the State Register on March 21, 2018 [SAPA No. 15-E-0302SP33]. In response to the SAPA Notice, several comments were received by the May 21, 2018 deadline.

SUMMARY OF COMMENTS

In response to the Joint Utilities Petition, comments were submitted by the City of New York, the Clean Energy Advocates, and the Advanced Energy Economy Institute (AEEI).[9]

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[7] Case 15-E-0302, supra, Joint Utilities Petition for Clarification (filed December 18, 2017), p. 4 (Joint Utilities Petition).

[8] Joint Utilities Petition, p. 5.

[9] AEEI submitted comments on behalf of Advanced Energy Economy, the Alliance for Clean Energy New York, the Northeast Clean

The Joint Utilities filed supplemental comments offering additional support for their requested relief.

The City of New York requested that the Commission verify the Joint Utilities' REC overage projections prior to ruling on the Petition. Assuming the Joint Utilities' projections are accurate, the City of New York suggests measures to ensure that granting the relief in the Petition does not disincentivize renewable development in Con Edison's territory. In addition, the City of New York requests that any modifications to the REC transfer rules apply equally to utilities and other REC owners.

The Clean Energy Advocates commented that they oppose the removal of the 60% cap on REC banking and instead requested that the Commission undertake an immediate investigation to verify the estimated surpluses and, if accurate, adjust the 2019-2021 targets to account for these surpluses.

AEEI agreed with the Joint Utilities' proposal to allow REC trading among LSEs, and suggested that the resulting additional revenue could go toward offsetting or eliminating any amount that the utility paid for the excess VDER RECs. AEEI proposed that instead of allowing additional banking and borrowing, the Commission should raise the RES obligation on utilities to account for the additional supply of VDER RECs.

DISCUSSION

The Joint Utilities Petition is correct that potential VDER RECs were not taken into account in setting the revised 2018-2021 Tier 1 obligations in the CES Phase 2 Implementation Order. This is because, as the Petition acknowledges, any estimate of the number of VDER RECs that utilities will procure

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Energy Council, and their joint and respective member companies.

is extremely speculative at this time. While the Joint Utilities' estimates are themselves based on uncertain data and assumptions, it is reasonably likely that at least some utilities will receive VDER RECs in excess of 160% of their CES Tier 1 obligation in at least part of the 2018-2021 period. Requiring that those excess VDER RECs be forfeited would, as the Joint Utilities Petition explains, impose costs on ratepayers without serving any CES goal or providing any other benefit. It is therefore appropriate to provide relief that will eliminate the need to forfeit those VDER RECs.

The City of New York and the Clean Energy Advocates request that the accuracy of the numbers provided by the Joint Utilities be ascertained before taking any action. There are indeed several reasons to believe any excess of VDER RECs will be different, and potentially smaller, than the utilities forecast. First, the utilities calculated "RECs Needed" based on estimated retail load rather than estimated wholesale load. As was noted in the CES Framework Order, the LSE's obligation is to be measured at the wholesale level, grossed up to reflect the generation needed to serve customers prior to line losses.[10] Secondly, the utilities appear to have calculated the "RECs Available" each year by assuming that all projects that come into service each year would be in operation for that entire year. As most of the projects interconnected in 2018 are likely to be interconnected in the third and fourth quarters, this calculation method results in a significant overestimate of RECs likely to be available in 2018 and potentially future years.

However, even after adjusting for these factors, it appears likely that some utilities will receive VDER RECs in excess of 160% of their CES Tier 1 obligation in at least part

[10] CES Framework Order, p. 94.

of the 2018-2021 period. For example, even if only the 26 MW expected to be interconnected in 2018 are in service in O&R's service territory for most of 2019, the VDER RECs that O&R receives in 2019 will substantially exceed its Tier 1 obligation in that year. For that reason, and because this issue can be addressed without imposing costs on any entity or interfering with the goals of the CES, providing relief is appropriate even though the actual REC overages cannot be estimated with any significant precision.

In considering the relief requested in the Joint Utilities Petition and proposed by commenters, the most appropriate resolution is to relax the banking rules to permit the Joint Utilities to bank an unlimited number of VDER RECs each year from 2018-2022. This will allow the Joint Utilities to use any excess VDER RECs they accumulate during the early years, when the CES Tier 1 obligation is low, as part of their compliance in later years, when the obligation increases. By 2022, the increase should be sufficient that utilities will be able to use all new VDER RECs and use up remaining banked VDER RECs for CES compliance. Furthermore, if no excess of VDER RECs occurs, this relaxation of the banking rules will simply have no effect at all, rather than having a potential negative impact.

By contrast, modifying the CES Tier 1 obligations at this time would be inappropriate. Increasing the CES Tier 1 obligations would be inappropriate given the uncertainty associated with the production of VDER RECs, as even a relatively small error in estimation could lead to significant costs. However, when CES Tier 1 obligations are set for 2022 and subsequent years, VDER RECs will be taken into account. At that point, the Commission expects to have substantial experience with VDER RECs. Finally, we find that changing VDER REC transferability rules is unnecessary because the banking rule modifications approved herein are sufficient to ensure that no member of the Joint Utilities will be required to forfeit VDER RECs.

CONCLUSION

Requiring any member of the Joint Utilities to forfeit VDER RECs would unreasonably deprive ratepayers of the value of RECs that are required to be purchased on their behalf. However, modifying the CES Tier 1 obligations based on speculative estimates would create excessive risks. For those reasons, the Commission approves a temporary suspension of the 60% cap on the banking of RECs, applicable to VDER RECs only, through 2022.

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 and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation may bank an unlimited number of Generation Attribute Certificates acquired from projects compensated based on Phase One Net Energy Metering or Value Stack tariffs (VDER RECs) for use in compliance with the Clean Energy Standard in years 2018 through 2022, as discussed in the body of this Order.

2. The New York State Energy Research and Development Authority shall modify the New York Generation Attributes Tracking System to enable 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 to bank VDER RECs in excess of the 60% banking cap through 2022.

3. These proceedings are continued.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS
Secretary