STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on April 19, 2018

COMMISSIONERS PRESENT:

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

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

CASE 15-E-0082 - Proceeding on Motion of the Commission as to the Policies, Requirements and Conditions For Implementing a Community Net Metering Program.

ORDER REGARDING FARM-BASED DISTRIBUTED ENERGY RESOURCES

(Issued and Effective April 20, 2018)

BY THE COMMISSION:

INTRODUCTION

The Reforming the Energy Vision (REV) initiative envisions a distributed, transactive, and integrated electric system where clean, cost-effective distributed energy resources (DER) play a major role in the provision of safe, reliable, and clean electric service and receive accurate compensation for the values they create for the energy system. As part of enabling that vision and ensuring that all customers have access to participation in DER programs and markets, the Public Service Commission (Commission) created the Community Distributed

Generation (CDG) program on July 15, 2015.[1] Another part of enabling the REV transformation is represented by the transition away from net energy metering (NEM) to a new, value-based compensation methodology through the Value of DER (VDER) mechanism.[2] Both the CDG program and the VDER mechanism have included farm digesters as eligible DERs, subject to NEM eligibility rules. Farm digesters have played an important role in the initial deployment of DER under NEM and are expected to continue to contribute to New York’s clean energy goals.[3] As dispatchable DERs, they also have the potential to create meaningful capacity and distribution-system values. Farm digesters, as well as other types of anaerobic digesters, have also received substantial developmental and operational support from the New York State Energy Research and Development Authority (NYSERDA). Furthermore, as part of the Clean Energy Fund, NYSERDA is currently developing a competitive solicitation with a budget of eight million dollars for anaerobic digesters.[4]

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[1] Case 15-E-0082, Proceeding on Motion of the Commission as to the Policies, Requirements and Conditions For Implementing a Community Net Metering Program, Order Establishing a Community Distributed Generation Program and Making Other Findings (issued July 15, 2015) (CDG Order).

[2] Cases 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) (VDER Order).

[3] Farm digesters provide a way to treat livestock waste by allowing organisms to digest the manure. The manure digestion process produces a biogas, similar to natural gas, suitable for energy production through internal combustion engines, gas turbines.

[4] Matter 16-00861, In the Matter of the Clean Energy Fund Investment Plan, Clean Energy Fund Investment Plan: Resource Acquisition Transition Chapter at 59 (as revised and filed July 17, 2017).

On January 14, 2016, a Petition to Modify Community Net Metering Order to Incorporate Farm and Food Community Program (2016 Petition) was filed by Vanguard Renewables (Vanguard), a Massachusetts-based developer of anaerobic digesters. Subsequently, on May 5, 2017, following the VDER Order, a Petition for Farm Distributed Generation (2017 Petition) (collectively with the 2016 Petition, the Petitions) was filed by Dairy Farmers of America (DFA), Agri-Mark Inc. (Agri-Mark), and Vanguard (collectively, the Petitioners). The Petitions propose the establishment of a Farm Distributed Generation (FDG) program, which would be a modified version of the CDG program designed specifically for anaerobic digesters on farms. As part of the FDG program, the Petitions request that the Commission waive (a) the requirement that each CDG project serve at least ten members (the Ten-Member Minimum) and (b) the requirement that no single large member or group of large members consume more than 40% of the credits generated by a CDG project (the 40% Limit).

This Order grants the Petitions in part and denies the Petitions in part. Specifically, the request that the Ten-Member Minimum and the 40% Limit be waived is granted for CDG projects that only serve (a) farm operations[5] and (b) residences of individuals who own or are employed by the served farm operations. However, the request to create a special FDG program is denied as inconsistent with the intent of the CDG

[5] Pursuant to New York State Agricultural and Markets Law (AGM) §301(11), which is referenced in the New York State Public Service Law (PSL) at §66-j(1)(a)(ii), a "farm operation" is "the land and on-farm buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise . . ." and "may consist of one or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous to each other."

program and the policy goals of the REV and VDER initiatives. Through the REV and VDER proceedings, the Commission is moving to programs, markets, and policies that are focused on the costs and benefits that each DER creates for the energy system rather than programs focused on specific technologies. The waiver of the Ten-Member Minimum and the 40% Limit for CDG programs serving farm customers is sufficient to ensure that farm customers have access to DER programs and markets, while preserving the technology neutrality, valuation, and compensation decisions made in the VDER proceeding. It is also consistent with the Commission's previous waiver of the Ten-Member Minimum for CDG projects located on the site of a property serving multiple residential or non-residential customers located on that property.[6] Department of Public Service Staff (Staff) should continue to work with the Petitioners and other relevant stakeholders to ensure that farm-based DER have access to VDER and other REV programs and receive appropriate compensation for the benefits they offer to the energy system.

SUMMARY OF PETITIONS

Summary of the 2016 Petition

In the 2016 Petition, Vanguard, a Massachusetts-based developer of farm digesters, requested that the Commission modify the CDG Order to enable a pilot farm and food community generation program, consisting of four digesters located on dairy farms in the Hudson River Valley and the Capital Region. Vanguard argued in its petition that significant benefits would result from the pilot, including progress towards clean energy and REV-related goals.

[6] Case 15-E-0082, supra, Order Modifying Community Distributed Generation Membership Requirements (issued March 13, 2017).

The proposals in the 2016 Petition include: (1) establishment of a "Non-Demand Farm Digester Tariff;" (2) use of the solar net metering base rate tariff for one farm; (3) elimination of the per customer credit cap in the CDG Order; (4) implementation of a distribution and infrastructure fee to be paid to the Utility for use of the lines and administration of the RECs; (5) development of a financing method for interconnection costs using the utility balance sheet; and (6) testing of a microgrid at a farm location as a means of strengthening the utility's disaster response potential.

Summary of the 2017 Petition

In the 2017 Petition, Vanguard, along with DFA, a national dairy marketing cooperative, and Agri-Mark, a regional dairy cooperative, proposed the establishment of a FDG program. In the FDG program, just as in a CDG program, electricity would be generated at a host site and injected into the utility system, which would result in the creation of credits by the utility valued based on applicable VDER tariffs. Those credits would then be applied to the bills of program participants. The FDG program would be distinct from the CDG program in several ways, including: (a) only farm digesters located on farms would be eligible as generation, as compared to CDG, where all NEM-eligible technologies can participate; and (b) neither the Ten-Member Minimum nor the 40% Limit would apply, and instead 40% of the power output would serve the host farm, while the remaining 60% would be divided evenly among six customers, each of which would be "part of the food supply chain tied to the dairy industry and at least one of which would "be a 'small business' or a minority owned business," unlike the CDG program, where up to 40% of the power output can be allocated to one or more large customers[7] but the remaining 60% must be allocated to small customers, with each small customer's share of the project sized at 25 kW or less. According to the 2017 Petition, the FDG program would respond to the interests of the farm community and the food industry in renewable power.

The Petitioners additionally propose to test the use of gas storage on a farm in the FDG program. The stored biogas would be routed to an extra generator which can be utilized to provide on-demand electricity. The 2017 Petition explains that gas storage for use as an on-demand source of electricity is commonly done on European farm-based digester facilities. The project could store the amount of gas needed to run the second generator for six hours, and this stored gas could be used up to 155 times per year. The Petition states that this storage potential would meet goals for storing distributed energy and strengthening the electric grid without using fossil fuels.

NOTICES OF PROPOSED RULE MAKING

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rulemaking regarding the 2016 Petition was published in the State Register on February 10, 2016 [SAPA No. 15-E-0082SP3]. The time for submission of comments pursuant to that Notice expired on March 28, 2016. A Notice of Proposed Rulemaking regarding the 2017 Petition was published in the State Register on May 24, 2017 [SAPA No. 15-E-0751SP6]. The time for submission of comments pursuant to that Notice expired on July 10, 2017. The

[7] The 2017 Petition incorrectly describes this as an "anchor customer requirement." CDG projects are not required to have a large customer participating and may instead have exclusively small customers as members.

comments received on the Petitions are summarized and addressed below.

SUMMARY OF COMMENTS

Comments on the 2016 Petition

Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., Niagara Mohawk Power Corporation d/b/a National Grid, New York State Electric & Gas Corporation, and Rochester Gas and Electric Corporation (the Joint Utilities) oppose the 2016 Petition. They argue that the proposal would be impractical to implement, would unreasonably discriminate among renewable facilities and thereby distort the market, and would be unfair to the nonparticipating utility customers who could see higher rates. They also argue that all available technologies should compete on a level playing field so that market participants do not purchase an excess of inefficient resources or too little of efficient resources.

Vanguard filed a response to the Joint Utilities' comments, arguing that the criticisms raised by the Joint Utilities are off-base. Regarding the claim that Vanguard's proposal would contravene the Commission's existing Remote Net Metering policy on monetary crediting, Vanguard notes that some farm sites would be placed in areas where capacity is constrained as compared to demand, creating opportunities for stored energy to enhance grid reliability at peak times. Therefore, according to Vanguard, energy procured at those times could reasonably be valued at a premium rate. Vanguard also states that this would be a pilot program designed to test various scenarios. Vanguard argues that it is not seeking preferential treatment, but rather to test various circumstances and sets of parameters with agreed-upon metrics, to determine the best course of action going forward. Vanguard asserts that unique benefits are delivered by farm digesters, and rejects what it characterizes as the Joint Utilities' "one size fits all" approach.

Comments on the 2017 Petition

The Joint Utilities oppose the 2017 Petition and incorporate, by reference, their comments on the 2016 Petition. In addition, they argue that the Petitioners' proposal represents a premature modification and expansion of CDG that is contradictory with the Commission's stated policy goals, both for CDG and more generally. They state that the Commission has described the purpose of the CDG program as being "to open opportunities for participation in solar and other forms of clean distributed generation" to customers that might otherwise be unable to participate and that the CDG Order specifically focused on small customer participation. They note that the one modification the Commission made to CDG membership requirements was specifically intended to facilitate the participation of small customers.[8] They assert that, in contrast, the proposed FDG program is focused on creating a new opportunity for large customers. They argue that, as farm digesters are already eligible technologies for VDER and CDG, a separate program is both unnecessary and inconsistent with the goal of implementing tariffs on a technology-neutral basis. They recommend that further consideration of whether any changes are needed to ensure appropriate treatment of farm digesters should take place in the VDER Phase Two working groups.

The New York Cow Power Coalition (Cow Power) filed comments supporting the 2017 Petition. Cow Power explains that farm digesters, when appropriately compensated, can be an important component in achieving the State's renewable energy

[8] Case 15-E-0082, supra, Order Modifying Community Distributed Generation Membership Requirements (issued March 9, 2017).

and environmental goals. Cow Power supports the FDG program as one method of providing the additional support needed for farm digesters to continue operating and creating energy and environmental benefits.

Farm Credit East filed comments supporting the 2017 Petition. Farm Credit East argues that the creation of a new program based on CDG is an effective method for offering benefits without the costs associated with developing a new model.

LEGAL AUTHORITY

As described in the VDER Order, the Commission has the authority to direct the treatment of DER by electric corporations pursuant to, inter alia, Public Service Law (PSL) Sections 5(2), 66(1), 66(2), and 66(3). Pursuant to the PSL, the Commission determines what treatment will result in the provision of safe and adequate service at just and reasonable rates consistent with the public interest.

DISCUSSION AND CONCLUSION

The Commission agrees that farm-based generation, including farm digesters, offers the potential to contribute significantly to the State’s energy system and clean energy goals. As the REV initiative results in the evolution of the energy system, DERs like farm digesters will serve an increasingly large role in meeting energy needs. As dispatchable resources, they can provide meaningful capacity and distribution-system values, much as other valuable DERs do. Further, farm digesters may also create other, non-energy-related benefits, including reducing the carbon emissions of dairy farms. For these reasons, it is important that farm digesters, and farm customers more generally, can participate in REV-related programs and markets.

An important goal of the REV and VDER proceedings is to ensure that DERs are appropriately compensated for the various benefits they create for the energy system, and thereby provide more accurate price signals regarding whether and where such resources should be built and how they should be operated. As part of this initiative, the Commission has moved from programs focused on enabling particular technologies to programs and markets that are technology-neutral and focus on project benefits and costs.[9] Similarly, the Commission has taken steps to eliminate unnecessary restrictions[10] on customer types participating in these programs and markets.[11]

Waiver of the Ten-Member Minimum and the 40% Limit are appropriate measures to ensure that farm customers are also fully able to participate in CDG. A project developed by a farm customer may have difficulty meeting those requirements due to factors like low population density in the area of the farm, the desire to use a substantial portion of the generation to serve the farm responsible for developing the project, and the administrative complexity of maintaining a large number of CDG members. Waiving the Ten-Member Minimum and the 40% Limit will allow the farm developing the project to share its generation with other nearby farms, as well as farm owners and employees.

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[9] Case 15-E-0751, supra, VDER Order at 50-51.

[10] Expanding the universe of VDER eligible technologies and limiting unneeded restrictions, such as those imposed on farm digesters pursuant to PSL 66-j, is an ongoing topic of discussion in the VDER Value Stack Working Group in Matter 17-01276.

[11] Id. at 43-46. Case 15-E-0082, supra, Order Modifying Community Distributed Generation Membership Requirements (issued March 13, 2017).

To ensure that CDG projects continue to be focused on serving customers that otherwise might not have access to the benefits of distributed generation, this waiver will be limited to farm operations and owners and employees of farm operations, just as the Commission's prior waiver was limited to projects located on the site of a property serving multiple residential or non-residential customers located on that property. "Farm operations," consistent with existing usage in the Public Service Law,[12] will be defined as provided in Agricultural and Markets Law (AGM) §301(11) as "the land and on-farm buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise . . ." and "may consist of one or more parcels of owned or rented land, which parcels may be contiguous or noncontiguous to each other." A CDG project taking advantage of the waiver is responsible for certifying to the interconnecting utility that each member is either a farm operation or the owner or employee of one of the farm operation members.

Other details of the FDG program proposed in the Petitions are contrary to the Commission's goals and the policy decisions made in the CDG and VDER proceedings that resulted in the Value Stack approach. The FDG program would offer special treatment to one technology, farm digesters. Farm digesters already receive equivalent treatment to other generation technologies in CDG and VDER. Creating a special program for farm digesters would be a step in the opposite direction from REV's goals by moving back to technology-specific programs, rather than transitioning towards value-based markets. Existing

[12] PSL §66-j(1)(a)(ii).

farm digesters, most or all of which were developed with grants from effective NYSERDA programs, have the option to continue to receive compensation based on the programs that applied at the time they were built, such as net metering, or to opt in to new compensation mechanisms, such as the Value Stack.

For those reasons, the request to create a special FDG program is denied. The deployment of farm-based resources to benefit customers and the energy system can and should be achieved through technology neutral, value-based programs and markets. Petitioners and other developers of anaerobic digesters will also have the opportunity to develop new projects with NYSERDA support once the Clean Energy Fund anaerobic digester solicitation is released. Staff should continue to work with stakeholders, as well as NYSERDA and other appropriate state agencies, to ensure that farm-based resources have access to VDER and other REV programs and receive appropriate compensation for the benefits they offer to the energy system.

<u>The Commission orders</u>:

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 shall file tariff revisions necessary to reflect the waiver, for Community Distributed Generation (CDG) projects serving only farm operations and residences of individuals who own or are employed by the served farm operations, of (a) the requirement that each CDG project serve at least 10 members and (b) the requirement that no single large member or group of large members consume more than 40% of the credits generated by a CDG project, as

discussed in the body of this Order, on not less than 10 days' notice to become effective June 1, 2018.

2. The Petition to Modify Community Net Metering Order to Incorporate Farm and Food Community Program filed on January 14, 2016 and the Petition for Farm Distributed Generation filed on May 5, 2017 are otherwise denied as discussed in the body of this Order.

3. The requirements of Public Service Law §66(12)(b) and 16 NYCRR §720-8.1 concerning newspaper publication of the tariff amendments directed in 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. These proceedings are continued.

By the Commission,

(SIGNED) KATHLEEN H. BURGESS
Secretary