STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on May 19, 2011

COMMISSIONERS PRESENT:

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

CASE 10-E-0645 – In the Matter of the Interpretation of the Billing Period and Annual Credit Requirements Applicable to Certain Net Metered Customers.

ORDER DIRECTING TARIFF REVISIONS AND
MAKING OTHER FINDINGS

(Issued and Effective May 23, 2011)

BY THE COMMISSION:

BACKGROUND

In an Order Instituting Proceeding and Notice Soliciting Comments (Order Instituting Proceeding) issued January 25, 2011 in this proceeding, it was noted that New York’s six major electric utilities net meter eligible customers that offset their generation production against usage during the relevant utility billing period.[1] An excess of production over usage during a billing period is credited to the next bill, at

[1] The major electric utilities are: 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 (Niagara Mohawk); Orange and Rockland Utilities, Inc. (O&R); and, Rochester Gas and Electric Corporation (RG&E).

rates prescribed by Public Service Law (PSL) §66-j and §66-l.[2] It appeared, however, that utilities were interpreting differently the statutory requirements for calculating the billing credits.

Moreover, as provided for in PSL §66-j and §66-l, residential solar, farm waste, residential wind, and farm service wind customers are reimbursed at the utility's avoided cost for any excess in generation production credits over usage remaining at the end of an annual period.[3] If the annual anniversary date for a residential solar customer is set at exactly one year after generation system installation is completed, and that date falls soon after the summer season when solar production is highest, credits the customer may have accumulated during that season would be cashed out at avoided cost. That rate is substantially less than the tariff kWh rate that would be subtracted from bills during periods of lower solar production in the following fall and winter months, but for the cash-out. As discussed in the Order Instituting Proceeding, setting a uniform date for the annual cash-out, at May 1 of each year could avoid this disadvantage to residential solar customers.

In the Order Instituting Proceeding, interested parties were invited to submit comments by March 4, 2011, with reply comments due by April 4, 2011. Moreover, in conformance with State Administrative Procedure Act (SAPA) §202(1), notice

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[2] Under those statutes, certain residential and non-residential solar, farm waste, residential and non-residential wind, farm service wind, and residential micro-combined heat and power and fuel cell (micro-gen) facilities are eligible for net metering.

[3] PSL §66-j(4)(c) and §66-l(4)(c). Non-residential solar and wind customers, and micro-gen customers, are not entitled to annual cash outs.

of this proceeding was published in the State Register on February 16, 2011. The SAPA 202(1)(a) period for submitting comments in response to the notice expired on April 4, 2011. Timely initial comments were received from the six major electric utilities, the Alliance For Clean Energy New York (ACE) and Sustainable Energy Developments, Inc. (SED). Timely reply comments were received from ACE and Central Hudson.

POSITIONS OF THE PARTIES

Initial Comments

A. ACE

ACE believes that the intent of the net metering statutes would be furthered if all eligible metered customers were allowed to select an individual annual anniversary date on which their credits for generation production in excess of usage would be reimbursed through a cash-out. ACE would open that selection option to wind net metered customers as well as solar customers, because according to ACE, wind customers, like solar customers, confront seasonality in their generation production. ACE, however, cautions that, in contrast to the summer-peaking solar systems, wind systems typically generate at their highest availability during the winter months. Individual selection of the anniversary date, ACE contends, would ensure that the date when generation system installation is completed does not drive use of an annual anniversary date that prevents solar and wind net metered customers from maximizing the value of their generation production.

Absent the option to select the appropriate anniversary date, ACE asserts, customers may not be able to deploy their net metered generation to best control their energy costs, which would defeat the intent behind the net metering statutes. ACE is also concerned that, if customers cannot exercise the individual selection option, they will instead choose a date for completion of system installation that would accomplish the goal of obtaining an advantageous anniversary date. As a result, ACE hypothesizes, the number of net metered system installations would surge and ebb on a seasonal basis as customers pursue an advantageous anniversary date, adversely affecting the companies performing the installations because they would have to struggle to adapt their operations to times of high and low demand.

If its individual selection option is not adopted, ACE cautions that providing for a single uniform anniversary date of May 1, as suggested in the Order Instituting Proceeding, would not benefit wind net metered customers because their seasonal production pattern peaks in winter. ACE points out that allowing wind customers to instead opt for anniversary dates of their own choosing would enable them to select a beneficial date for the annual cash-out. If its proposal to allow each customer to select its anniversary date individually is not adopted, ACE suggests that May 1 would be an appropriate anniversary date for solar facilities, while September 1 would be appropriate for wind facilities.

ACE agrees with the analysis in the Order Instituting Proceeding detailing the proper calculation of net metering credits set forth in the Order Instituting Proceeding. All variable retail rate elements, ACE asserts, should be credited against a net metering customer’s bill, including the bills of those net metered customers that are demand metered.

B. <u>Central Hudson</u>

Central Hudson reports that it currently calculates net metering credits by recognizing the per kWh rates for base energy delivery, its market price charge, and its market price adjustment. To conform to the method of calculation proposed in the Order Instituting Proceeding, the utility states it will revise its calculation, by June 1, 2011, to recognize all effective kWh rate components, both those listed in the Order Instituting Proceeding and those particular to its rate structure.

As to the annual cash-out of excess credits at avoided cost, Central Hudson reports that it already, at the request of a solar net metering customer, will make a one-time revision to the anniversary date, albeit this option is not specifically detailed in its tariffs. While the utility is willing to tariff a one-time waiver of the anniversary date that would enable customers to, in effect, select their preferred anniversary dates, it would not impose May 1 as a uniform anniversary date. That approach, the utility asserts, would require it to read all affected meters on May 1, an onerous burden. If a uniform requirement is deemed necessary, the utility would instead set the anniversary date at the first scheduled meter reading occurring on or after April 1.

C. Con Ed/O&R

Con Edison and O&R (Con Ed/O&R) agree to conform their calculation of net metering credits to the methodology prescribed in the Order Instituting Proceeding by June 1, 2011. The utilities observe that O&R incorporates a per kWh tail block design in some of its rates and calculates net metering credits for those rate classifications using the rate for the tail block.[4]

Turning to the anniversary date for annual cash-out of net metering credits, Con Ed/O&R generally support performing the cash-out at a uniform time for eligible customers. They note, however, that Con Edison already performs the cash-out for

[4] None of the six major electric utilities other than O&R designs electric base rates for demand customers using a tail block structure.

its eligible customers in January of each year. If the May 1st date is adopted, they request that Con Edison be permitted to implement the new date by delaying the cash-out scheduled for January 2012 to May 2012, thereby avoiding the burden of performing cash-outs in both of those months. The utilities also acknowledge that, although O&R currently cashes out the credits at an anniversary date set at one year following installation of a system, it could implement a May 1 anniversary date instead.

D. National Grid

National Grid points out that eligible non-demand net metered customers are credited at the amount, in kWh, by which deliveries of electric energy exceed usage of electric energy in the next month, instead of through calculation of a monetary credit. Excess generation is converted to a monetary credit, National Grid continues, for those net metered customers that are demand metered and billed, with the credit first used to offset the bill in the month where the credit is accumulated. If an excess credit remains after that offset, the credit is then carried over for use in the following month or months.

Currently, National Grid reports, it develops the monetary credit by summing kWh charges for distribution delivery, the competitive transition charge, and actual commodity prices, but excluding its delivery adjustment and commodity adjustment charges. It also excludes from the calculation the systems benefits charge (SBC), renewable portfolio standard (RPS) and energy efficiency portfolio standard (EEPS) kWh charges. It notes that, for demand-metered customers, the PSL §18-a(6) Temporary State Assessment Surcharge (TSAS) is recovered in a kW rate. Consequently, the kW rate would not be reflected in the calculation of the monetary credit.

While, National Grid states, it would revise its calculation to reflect the excluded kWh charges by June 1, 2011 if the Commission so directs, it adds that it would be remiss if it did not point out that use of such a method would shift an additional cost burden to the remaining customer base that does not net meter. Those other customers, the utility explains, would bear the SBC, RPS, EEPS and TSAS charges that net metered customers would escape. National Grid asks that it be confirmed that imposing this burden is required, before the June 1 date scheduled for implementation of the requirement.

As to the anniversary date for cashing out excess credit for eligible customers, National Grid explains that it already accepts customer requests to make a one-time change to that date. The utility expresses its willingness to offer that option to all new net metering customers, but it does not believe that existing customers which have already exercised an option to select their anniversary date need be given a second opportunity. The utility also opposes using a uniform anniversary date such as May 1, because allowing customers to select their own date minimizes the administrative burden that would attend performing the calculation for all eligible net metering customers on a single date.

E. NYSEG/RG&E

Like National Grid, NYSEG and RG&E (NYSEG/RG&E) report that they do not currently reflect the SBC, RPS, EEPS or TSAS charges in the net metering monetary credit calculations. The utilities report, however, that they will revise their calculations effective June 1, 2011. The utilities would implement the calculation in bills issued to eligible net metering customers thereafter, without proration for the portion of the billing period falling before June 1. Also like National Grid, NYSEG/RG&E announce that they already allow a residential customer participating in solar net metering to select an anniversary date for the cash-out of excess credits. The utilities would continue to allow each customer to select that date instead of requiring a uniform May 1 anniversary date, which they believe would unduly limit customer choice.

F. SED

Describing itself as a leading small wind developer, SED supports ACE's position that each wind customer as well as each solar customer should be permitted to select its anniversary date for the cash-out of excess credits. It also agrees with ACE that wind facility generation tends to peak in winter, rendering a May 1 uniform cash-out date ineffective in enabling wind net metering customers to maximize the value of their generation. As a result, SED would allow each wind customer to select its anniversary date individually or, in the alternative, would establish a uniform September 1 anniversary date for net metered wind customer cash-outs.

Reply Comments

A. ACE

ACE states it is pleased to see that Central Hudson, NYSEG/RG&E and National Grid already permit solar net metered customers to select individual anniversary dates for the cash-out of excess credits, and that the utilities oppose using May 1 as the uniform anniversary date. ACE reiterates it preference for allowing all eligible net metered customers to exercise the option of selecting an individual anniversary date.

ACE, however, expresses surprise that it appears the utilities have not been properly calculating net metering credits. ACE contends that customers are owed credits for those kWh components that were not included in the calculation of bills issued prior to June 1, 2011.

B. Central Hudson

Although acknowledging that the method of calculating the net metering credits is ultimately a regulatory policy decision within the discretion of the Commission, Central Hudson joins National Grid in observing that crediting the SBC, RPS, EEPS, and TSAS charges to net metered customers will shift the burden of funding those charges to other ratepayers, thereby increasing their bills. Central Hudson also reports that it charges the TSAS on a kWh basis in some of its demand metered service classifications, but in others the assessment is charged through a kW charge. Central Hudson asks if this distinction affects its calculation of the net metering credits.

DISCUSSION AND CONCLUSION

The Credit Calculation

As discussed in the Order Instituting Proceeding, PSL §66-j and §66-l are best interpreted as requiring inclusion of all kWh charges in the calculation of net metering credits, without exception. Other than National Grid, the utilities agree to revise their net metering calculations to conform to the requirements proposed in the Order Instituting Proceeding as of June 1, 2011. National Grid asks that this requirement be confirmed, in light of its view that imposing it will unduly burden other customers.

Under PSL §66-j and §66-l, an allegation that a burden is imposed on other customers is not a reason for escaping the prescribed method for calculating the credit. Moreover, that burden is addressed in those statutes through their limitations on the cumulative magnitude of net metered installations.[5] As a result, the interpretation of PSL §66-j and §66-l proposed in

[5] See PSL §66-j(3)(a)(iii) and PSL §66-l(3)(a)(iii).

the Order Instituting Proceeding is confirmed and adopted, and the major electric utilities are directed to implement the interpretation in performing their calculations of net metering credits beginning on June 1, 2011. Consistent with NYSEG/RG&E's suggestion, the calculation shall be implemented by applying it to bills issued on or after June 1, 2011, without proration for the portion of the billing period falling before that date.[6]

O&R's method for calculating the credits, however, requires modification. Currently, O&R reflects in its calculation, for those service classifications with blocked rates, only the tail block rate. PSL §66-l(4)(b), however, specifies that the credit be calculated "at the same rate per kilowatt hour applicable to service provided to other customers in the same service class." As a result, when calculating net metering credits, O&R must parallel the block rates it charges to customers. That is, as the volume of a net metered customer's generation production grows in excess of usage, the excess production volumes would be matched against the usage volumes identified in the blocks, beginning with the first usage block. The rate for that block would be inserted into the calculation so long as volume of excess production remains within the volume of usage set for that block. When, beginning with the first block, production volume rises beyond the usage volume for a particular block, the next block is reached and its rate is applied to the volume of production in excess of the amount credited at the prior block's rate. O&R shall use this method in calculating net metering credits.

[6] That Central Hudson charges the TSAS rate element on a kWh basis in some demand metered classifications but not in others does not affect implementation of the calculation; conformance with PSL §66-j and §66-l is achieved through reflecting the TSAS in the credit calculation only when it is charged in a kWh rate.

ACE suggests that the method of calculation of net metering credits first proposed in the Order Instituting Proceeding could be applied retroactively. No net metering customer, however, has complained that any bill was improperly calculated. Moreover, no utility has violated any of our Orders, because, prior to issuance of this Order, utilities were not required to use any particular method of calculating the net metering credits. Given that utilities merely exercised discretion when calculating the credits in the absence of guidance to the contrary, retroactive application of the calculation method first proposed in the Order Instituting Proceeding will not be required, so long as a utility implements the method prescribed above by the June 1, 2011 date adopted here.

The Anniversary Date

As detailed in the Order Instituting Proceeding, a solar net metered customer can be disadvantaged if the anniversary date for its annual cash-out of its avoided cost reimbursement is set at exactly one year following completion of installation of the solar generation facility. To prevent that outcome, it was proposed in the Order Instituting Proceeding that a residential solar customer should be permitted to exercise a one-time waiver of its annual cash-out date, and delay the cash-out until the next subsequent May 1 date. Central Hudson, National Grid and NYSEG/RG&E, however, already allow solar net metered customers to exercise a one-time waiver and select an individual anniversary date, while Con Edison cashes out the credits for these customers in January bills. Only O&R requires that the anniversary date always be set at one year following installation.

No commentator other than Con Ed/O&R supported setting a uniform date for the cash out of excess net metering credits owed solar net metered customers. Instead, most commentators other than ConEd/O&R favored allowing solar net metered customers to select individual anniversary dates for cash-out of excess net metering credits, by waiving the otherwise-applicable anniversary dates set at one year following completion of generation system installation. The commentators, again except for Con Ed/O&R, also criticized the setting of a uniform anniversary date at May 1.

The reasons proffered in favor of allowing each eligible net metered customer to select an individual anniversary date are sound, notwithstanding that Con Edison prefers use of a uniform date. The individual selection option enables each net metered customer to best optimize the value of its generation production and avoids the administrative burden that would attend use of a single cash out date. Therefore, that approach is adopted for all six major electric utilities offering net metering, including Con Edison and O&R. A consistent approach is needed to avoid the confusion that would occur, to the detriment of the orderly development of the renewable generation business in New York, if utilities were permitted to implement divergent approaches.

Moreover, the selection option must be tariffed, so that existing net metered customers and customers considering installation of net metered generation systems will be informed of the option's availability. As National Grid points out, however, customers may be limited to exercising the option a single time. Otherwise, the repeated implementation of billing system changes might impose excessive costs on utilities and their ratepayers, or anniversary dates might be manipulated to the disadvantage of other ratepayers. Customers that have already exercised the option and selected an individual anniversary date, at the utilities that allowed it, therefore need not be afforded a second opportunity. Con Edison, however, shall offer the one-time selection option to those net metered customers currently subject to the utility's uniform January cash-out, because those customers have not yet been offered the opportunity to select an anniversary date of their own choosing.

SED and ACE both propose to extend the cash-out anniversary date selection option to eligible wind net metered customers as well as eligible solar net metered customers. ACE would further extend the selection option to all eligible net metered customers; besides residential solar, residential wind and farm wind customers, only farm waste net metered customers are eligible for a cash-out. There is no reason to deny any of these net metered customers eligible for a cash-out the one-time option to select an anniversary date, thereby enabling them to avoid any disadvantage they might see in an anniversary date set at one year following installation. Consequently, the selection option shall be tariffed for all net metered customers eligible for a cash-out.

<u>The Commission orders</u>:

1. The six major electric utilities listed in the body of this Order are directed to implement the method for calculating net metering credits prescribed in the body of this Order in all bills issued to eligible net metering customers on or after June 1, 2011.

2. The six major electric utilities listed in the body of this Order are directed to file tariff amendments on or before June 8, 2011, to become effective on June 15, 2011, allowing eligible residential solar, farm waste, residential wind, and farm wind customers to select an individual anniversary date for the annual cash-out of excess net metering

credits in accordance with the discussion in the body of this Order.

3. The requirements of Public Service Law §66(12)(b) as to newspaper publication of the amendments directed in Ordering Clause No. 2 above are waived.

4. The deadlines provided for in this Order may be extended as the Secretary may require, except that any utility that fails to implement the method for calculating net metering credit prescribed in the body of this Order by June 1, 2011 can be required to recalculate bills issued to net metering customers on or after that date.

5. This proceeding is continued, but shall be closed by the Secretary upon compliance with Ordering Clauses No. 1 and No. 2, unless she finds good cause to continue it further.

By the Commission,

Jaclyn A. Brilling
Digitally Signed by Secretary
New York Public Service Commission

JACLYN A. BRILLING
Secretary