

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on June 13, 2013

COMMISSIONERS PRESENT:

Garry A. Brown, Chairman
Patricia L. Acampora
James L. Larocca
Gregg C. Sayre

CASE 03-E-0188 - Proceeding on Motion of the Commission
Regarding a Retail Renewable Portfolio
Standard.

ORDER AUTHORIZING TRANSFER OF SOLAR PHOTOVOLTAIC FUNDING IN THE
CUSTOMER-SITED TIER AMONG NEW YORK INDEPENDENT SYSTEM OPERATOR
LOAD ZONE GROUPS

(Issued and Effective June 20, 2013)

BY THE COMMISSION:

INTRODUCTION

In this Order, the Commission authorizes the New York State Research and Development Authority (NYSERDA) to modify the Renewable Portfolio Standard (RPS) Customer-Sited Tier (CST) competitive solar photovoltaic (solar PV) program to help meet the goals of the NY-Sun initiative. Specifically, the Commission authorizes NYSERDA, in response to its petition of April 5, 2013, to transfer approximately \$32 million of solar PV program funds currently allocated to NYISO load zones I-J to zones A-F and G-H. This action will allow NYSERDA to respond to market demand in the load zone groups under the New York Sun (NY-Sun) Competitive PV Program Opportunity Notice (PON) 2589.

BACKGROUND

On April 2, 2010, the Commission established budgets and targets for the Customer-Sited Tier of the RPS Program through 2015, including a component that encouraged large-scaled installations of solar PV and other technologies in the downstate region to help address geographic inequities in the RPS program. This component was referred to as the "Geographic Balance" Program and provided, through competitive solicitations, \$5 million to zone group G-H and \$25 million for zone group I-J annually.¹ To date, only solar PV has successfully competed in these solicitations.

On April 24, 2012, the Commission issued a subsequent order that expanded the RPS competitive solar PV program to respond to Governor Cuomo's NY-Sun initiative, announced in his 2012 State of the State message. The current goal of NY-Sun is to quadruple the number of 2011 solar PV installations in 2013. To support the goals of the NY-Sun initiative, the Commission's 2012 order expanded the competitive solar PV program to include upstate NYISO load zones A-F and added a total of \$76.9 million in funding.² Approximately \$38 million was allocated for zone group A-F; \$6 million for load zone group G-H; and \$32 million for load zone group I-J. These allocations to the various load zones are roughly proportionate to the ratepayer collections.

The 2012 Order also provided NYSERDA with discretionary authority to transfer funds from the upstate zone

¹ Case 03-E-0188 Retail Renewable Portfolio Standard, Order Authorizing Customer-Sited Tier Program Through 2015 and Resolving Geographic Balance and Other Issues Pertaining to the RPS Program, issued and effective April 2, 2010. (2010 Order)

² Case 03-E-0188, supra, Order Authorizing the Expansion of the Solar Photovoltaic and Geographic Balance Programs from 2012 through 2015 and the Reallocation of Main-Tier Unencumbered Funds, issued and effective April 24, 2012. (2012 Order)

groups (A-F) to either of the downstate load zone groups (G-H or I-J) based on market demand. However, NYSERDA was not authorized to transfer funds from downstate to upstate load zones because the Commission wanted to maintain the geographic balance of program funds in the downstate region.

SUMMARY OF NYSERDA'S PETITION

In its petition, NYSERDA seeks authorization to transfer approximately \$32 million from load zone group I-J to load zone groups A-F and G-H, to respond to marketplace demand and to help achieve the 2013 goals of NY-Sun. NYSERDA explains that for its current solicitation, PON 2589, it aggregated 2012 and 2013 NY-Sun funds resulting in a program offering of \$106.9 million (of which approximately \$38.4 million was allocated to zones A-F; \$11.4 million to zones G-H, and \$57 million to zones I-J). PON 2589 provides for three separate rounds of bids: Round 1 was due December 5, 2012; Round 2 was due on March 14, 2013 and Round 3 is scheduled to be due August 29, 2013.³

NYSERDA reports that market demand for Round 1 was robust with awards in zone group A-F totaling approximately \$32 million of the \$38 million available; and awards in load zone group G-H comprising \$10 million of the \$11 million available. By contrast, NYSERDA reports that market demand for NYISO load zone group I-J totaled only \$5 million of the \$57 million available.

NYSERDA further states that Round 2 proposals, received March 14, 2013, showed the same disparity in market

³ PON 2589, offering \$106.9 million, consists of \$ \$30 million of 2013 Geographic Balance funds, plus \$36.4 million of 2012 NY-Sun funds, plus \$40.5 million of 2013 NY-Sun funds. The \$30 million of Geographic Balance funds is divided into an allocation of \$5 million for zone group G-H and \$25 million for zone group I-J.

demand between the zone groups as in Round 1. The Round 2 aggregate demand for load zone groups A-F and G-H continues to be strong while zone group I-J less so, resulting in about \$12 million of proposal requests of the \$52 million remaining in that zone group. For zone groups A-F and G-H, a smaller portion of funding remains (\$6 million for zone group A-F and \$1 million for zone group G-H). Since NYSERDA does not have discretionary authorization to transfer funds out of zone group I-J, it notes that it cannot award contracts to the majority of projects in zones A-H that are ready to begin construction in 2013 to help meet NY-Sun goals.

NYSERDA's petition also cites possible reasons for the drop in demand in zone group I-J, including the current focus on restoration and hardening efforts in the aftermath of Superstorm Sandy and the difficulty of system interconnection into New York City's "area network" as possible challenges. NYSERDA expects that, as the storm recovery in zone group I-J continues, building owners will refocus their attention on solar PV and market demand will eventually return.

In the interim, NYSERDA requests the transfer of existing funds from NYISO load zone group I-J to meet existing demand in load zone groups A-F and G-H to support Governor Cuomo's 2013 NY-Sun goals.

NOTICE OF PROPOSED RULEMAKING

A Notice of Proposed Rulemaking (Notice) concerning NYSERDA's petition was published in the State Register on April 17, 2013, [03E0188SP39]. The minimum period for the receipt of public comments pursuant to the State Administrative Procedure Act (SAPA) regarding the Notice expired on June 3, 2013.

Comments were received from the Alliance for Clean Energy New York (ACE NY), the City of New York (City), Consolidated Edison

Company of New York, Inc. (Con Edison), Hudson Solar, the New York Solar Energy Industries Association (NYSEIA), Vote Solar Initiative and Pace Energy and Climate Center (Vote Solar and Pace), the Clean Energy Collective (CEC) and TMG Consulting (TMG) and are summarized below.

SUMMARY OF COMMENTS

Ace NY supports a limited transfer of funds to assist furthering the NY Sun goals. It also recommends that NYSERDA explore the decreased demand in the NYISO load zone group I-J to help return demand to previous levels.

Hudson Solar fully supports NYSERDA's request, noting that the remaining \$1 million and \$6 million, for NYISO load zone groups A-F and G-H respectively, are less than one fifth of what was awarded in the previous round under PON 2589. It states that a substantial amount of work by the bidders and their customers is required in order to participate in the solicitations and that if NYSERDA's request to transfer funds is not authorized, then most of the bids in zone groups A-F and G-H will not be awarded, leaving a significant amount of projects unfunded. It also recommends that, in the future, NYSERDA have the flexibility and discretion to allocate funds among NYISO load zone groups to respond to market demand.

NYSEIA supports NYSERDA's petition but requests that NYSERDA be directed to conduct a meaningful examination of the barriers faced in zone group I-J, including delays in system interconnections and the higher cost of doing business in New York City (NYC).

Vote Solar and Pace generally support NYSERDA's petition, noting that the Commission should aggressively target and overcome any market, regulatory, and distribution system barriers to solar PV installations downstate. It states that

failing to approve NYSERDA's petition would result in ratepayer funds sitting idle, instead of providing funds to the regions where demand is currently greatest. It further suggests that the Commission direct Con Edison and the other utilities to make the necessary capital improvements to improve interconnection of solar PV generation. Vote Solar and Pace state that they believe the remaining \$25 million is "more than sufficient" to satisfy the demand expected for the balance of the third round of PON 2589 and note that if demand downstate rises faster than expected, NYSERDA already has the authorization to transfer funds back to NYISO load zone group I-J.

The City opposes the transfer of funds from NYISO load zone group I-J. It expects that demand in that zone group will rebound and cites the City's "PlaNYC 2030: A Greener, Greater New York", which supports a significant amount of solar to be located in load zone group I-J. It states that NYC is highly suitable for solar PV installations and notes the benefits of encouraging solar PV downstate. The City also notes that NYSERDA's request to reallocate funds within the NYISO load zone groups is inconsistent with Commission's previous decisions on geographic balancing.

The City also challenges NYSERDA's claim that the lower demand for NYISO load zone group I-J is based on Superstorm Sandy. Instead, it states, based on installer interviews, that the reduced demand in NYC is due to improper incentive design and recurring changes to the terms of NYSERDA's solicitation. This, it asserts, has made the current process too cumbersome for the NYC solar market. The City further notes that 40 percent of RPS funding comes from Con Edison customers and that if the Commission does grant NYSERDA's petition, it should assure that an equal amount is provided for solar PV in zone group I-J in the very near future.

The City also proposes that NYSERDA develop solar PV incentives that are tailored for specific regions, specifically noting that it believes a standard offer PV incentive is better suited to NYC than a competitive bid program partly due to the complexities of the NYC building stock, utility infrastructure, and permitting process. It also recommends that NYSERDA pilot a PV feed-in tariff (FIT) for NYC, modeled on LIPA's FIT. It recommends that the FIT should be funded by the unused and unencumbered funds from zone group I-J.

The City strongly urges the Commission to direct NYSERDA to report the aggregate and program-specific level of RPS funds collected from and disbursed within each utility service territory and county on a quarterly basis to facilitate stakeholder analysis and comment. It also proposes changes to the program that drops the requirement that the meter owner must pay the RPS/SBC surcharge. This, it asserts, disqualifies most City-owned property. Instead, it states, the requirement should be changed to require that the energy "off-taker" or consumer pay the RPS/SBC surcharge. The City also recommends that the Commission allow Con Edison to develop utility-owned solar PV projects on its own property. It notes the Commission's previous decision to exclude utilities from directly participating in the bidding process under the geographic balancing program and believes now is the time to revisit the issue for zones I-J.

Lastly, the City provided a number of additional comments on another NYSERDA petition regarding the CST PV standard offer program, pending before us, but not the subject of this order.

Con Edison does not oppose a one-time flexibility of transferring funds between load zone groups sought by NYSERDA to help meet NY-Sun goals. However, it states that NYSERDA should

be directed to take "appropriate steps" to better encourage the competitive PV program downstate to build long term support for renewable energy. Con Edison also proposes that the Commission allocate some of the unencumbered downstate solar PV funds to the Indian Point contingency solution that is the subject of a current Commission proceeding. It notes that the funds could go towards energy efficiency and demand side management, which would also assist in meeting the State's energy efficiency goals.

Con Edison also recommends that the Commission direct NYSERDA to spend some of the unencumbered downstate PV funds to perform a study regarding underperformance in NYC and address those findings, specifically those related to permitting, interconnection, building stock, roof maintenance, and coincidence of solar irradiation and delivery system requirements. It also recommends that: utilities should be allowed to use RPS funding to site PV on utility-owned property; NYSERDA should offer a production-based incentive similar to that of the RPS Main Tier for non-net metered solar PV only; NYSERDA should provide an RPS "bonus" for projects that support the Indian Point contingency effort; and NYSERDA should relax rules that prevent developers that secure NYSERDA funding in one solicitation from participating in subsequent solicitations until they have completed their funded projects. Con Edison also provided comments regarding the other NYSERDA petition pending before us. Again, we will not consider those comments here since they are not the subject of this Order.

Both CEC and TMG recommend that the Commission reject NYSERDA's request and state that they do not believe that Superstorm Sandy has affected installation of solar projects in Zone J. They believe that lack of demand is due to lack of opportunity, noting that Con Edison ratepayers that either do

not own their own building or have a poorly sited building, live in a multi-family structure with zero roof access or cannot afford an onsite system that starts at \$15,000 or more. Therefore, they are all unable to participate in any current solar rebate program in Zone J. CEC and TMG believe that the solution to these issues is to support the "Community Solar Model", which provides customers an opportunity to own solar PV without it being installed on their roof, while keeping the solar host within NYISO load zone J. CEC and TMG note that they do not use net-metering in this model. They explain that customers who take part in the Community Solar Model would receive an on-bill credit for the energy their solar panels produce. Finally CEC and TMG note that 80 percent of the NYSERDA solar rebates in 2012 went to counties north of Westchester, while NYISO load zone J is a perfect candidate to increase its solar capacity through the Community Solar Model.

DISCUSSION

When we first authorized a competitive program for Solar PV and other technologies⁴ in the downstate regions of New York State, it was to address an imbalance between the collections of RPS funding and RPS project locations (geographic balance). It was also an opportunity to direct more funding to the downstate NYISO load zones for larger solar PV projects that could yield system benefits in a congested urban area. We allocated \$30 million per year for the five years of the program, of which \$25 million was earmarked for NYISO load zones I-J and \$5 million for load zones G-H. That program has been successful in promoting larger PV systems (above 50 kW) that could not economically compete in the RPS Main Tier.

⁴ Bio-gas fueled generation was also eligible for the competitive Geographic Balance program initiated in the 2010 Order, but as yet no such installations have been bid under that program.

In our 2012 Order, we adopted the NY-Sun goals and the same competitive framework we had earlier authorized for the Geographic Balance program for a new statewide program. In doing so, we divided the total funds into three parts for three NYISO load zone groups; the two that already existed (G-H and I-J) and a new group comprised of NYISO load zones A-F. In that order, we authorized NYSERDA to shift funds from load zone group A-F to the other two load zone groups, however, we did not allow for the reverse transfer of funds in order to maintain and strengthen the geographic balance effort previously initiated.

NYSERDA seeks to use funds from the recently designed state-wide competitive program in PON 2589 that have not been utilized in NYISO load zone group I-J and, instead, use those funds for projects that have been proposed in the upstate load zones, for which funding is insufficient to cover demand. It seeks this authorization solely for funds earmarked in PON 2589, through 2013. NYSERDA does not seek to prejudge future results, or request the authority to transfer funds in a similar manner in the future without our explicit approval.

We find that the relief NYSERDA seeks is reasonable and limited. Without it, the remaining funds currently earmarked for NYISO load zones I-J will likely go unspent and the NY-Sun Initiative goals are less likely to be met. However, we are sensitive to the fact that we established a program specifically to address geographic inequities and will require NYSERDA to ensure that all meritorious projects in load zones I-J get funded in the future, within the bounds of the budgets we set for the program.

With respect to comments that recommend an examination of the reasons for decreased demand or provide recommendations for significant program design changes, we will require NYSERDA, in consultation with Department of Public Service Staff, to

further examine those recommendations in the course of our on-going overall RPS program review. Regarding suggestions that unspent funds from zone group I-J be used for other purposes including funding studies or for energy efficiency and demand response programs, while laudable, we believe that the funds should remain in the solar PV program, at this time, in order to meet the ambitious goals of NY-Sun.

The Commission orders:

1. The New York State Energy Research and Development Authority (NYSERDA) is authorized to transfer approximately \$32 million from NYISO load zones I-J to load zones A-F and G-H under the New York Sun competitive Opportunity Notice 2589 in the manner described above.

2. This proceeding is continued.

By the Commission,

(SIGNED)

JEFFREY C. COHEN
Acting Secretary