

Filing regarding December 31, 2017 deadline for monetary grandfathering

Dear Secretary Burgess:

The members of the New York Interconnection Policy Working Group (“IPWG”) submit this letter regarding the Public Service Commission’s (the “Commission”) April 17, 2015 Order Granting Rehearing in Part, Establishing Transition Plan, and Making Other Findings in cases 14-E-0151 and 14-E-0422 (the “Order”). Among other things, the Order established a Transition Plan from monetary to volumetric net metering, holding that “[t]o retain monetary crediting, a project must enter service . . . by December 31, 2017.”¹ In the nearly 16 months since the Order was released, new and unanticipated conditions have emerged that threaten to undermine the Commission’s stated goal of transitioning to volumetric net metering “without disrupting the plans of developers seeking in good faith to bring solar and other net metered generation projects on-line.”² In light of these circumstances, we respectfully recommend that the Commission reassess the milestone established in the Order and, in particular, adopt an additional avenue to grandfathering – a set of milestones (described below) that address the concerns raised by the new conditions, while remaining faithful to the Commission’s original intent.

We note that the proposal offered here was discussed by the full IPWG on three occasions. It was initially presented on Thursday July 28, 2016; the utility members of the IPWG provided written and verbal comments at subsequent meetings held on August 18 and August 30, 2016. While the IPWG does not function by formal vote, it is the sense of the signatories that substantial consensus exists among the members in support of the present proposal.

I. Background

In the Order, the Commission acknowledged the fact that monetary crediting for remote net metering “advantages remote net metering customers over on-site net metering customers, encouraging customers to arbitrage by pursuing projects at remote instead of on-site locations.”³ The Commission addressed this circumstance by replacing monetary crediting with a volumetric crediting framework for remote net metering. When doing so, the Commission also recognized the potentially damaging effects on New York State’s nascent solar market of an abrupt or disorderly transition, and therefore the Commission adopted the Transition Plan grandfathering projects under the monetary crediting framework if such projects are placed in service by December 31, 2017.⁴ It was anticipated, based on information available at the time of the Order, that the December 31, 2017 placed-in-service milestone would adequately protect the investments of developers that had already deployed time and capital to bring net metered projects online under the prior framework.

II. The New and Unanticipated Conditions That Have Emerged Since the Order Was Released Justify Reassessment of the Grandfathering Criteria.

¹ 4/17 Order, Page 17.

² 4/17 Order, Page 2.

³ 4/17 Order, Page 2. The “Background” section of the Order provides a detailed description of the Commission’s intent.

⁴ The Commission excepted projects participating in a solicitation, RFP, or RFI from a municipality or government entity from the December 31, 2017 deadline. These projects are required to comply with the terms of the applicable solicitation and are not at issue here.

The IPWG members believe that in some cases the circumstances of the utility interconnection process today differ from those that were present or envisioned at the time of the Order. While we understand and appreciate the reasons for these differences (and would like to note that the utilities have worked diligently to rectify delays and keep pace with the increased demand for Distributed Energy Resource (“DER”) interconnection), the fact is that some projects have experienced significant delays in the Preliminary Review and CESIR processes as a result of dramatic increases in interconnection application volume, utility resource constraints, and other factors. The result is that projects that we, and we believe the Commission, fully expected would be placed in service by the December 31, 2017 cutoff date are now in serious jeopardy of not achieving this milestone.

a. During a Key Period, In Some Cases, the Average Utility Interconnection Timelines Were Significantly Longer Than Was Anticipated When the Order Was Released.

We understand that the Commission is aware that for some projects the interconnection process experienced delays between June 2015 and June 2016 as a result of a significant influx of interconnection applications. For some projects, this resulted in increased interconnection timelines that exceeded what was anticipated at the time of the Order.

The Standardized Interconnection Requirements (“SIR”) allow for 15 business days between the date a customer’s application is accepted by the utility as submitted and complete and the date the utility sends the results of the preliminary review to the customer. For a sample of 89 2MWac projects screened between June 2015 and June 2016 that was analyzed by IPWG members, the average time to complete this stage was 66 business days. Similarly, the SIR allows for 60 business days between when the customer pays for a Coordinated Electric System Interconnection Review (“CESIR”) – the system impact study – and when the results of the CESIR are to be delivered to the customer. In the sample selected, this took an average of 115 business days.

Combined, then, for this sample of applications submitted between June 2015 and June 2016, the average interconnection timeline from an application’s acceptance to the issuance of the CESIR results was 241% of what is prescribed in the tariff – 181 business days, against the 80 business days allotted in the tariff; an average five-month delay.⁵ It should be noted that in some cases, developers also delayed moving projects forward to CESIRS since, at that time, the SIR had no definitive customer compliance timelines. However, we feel that the criteria described in Section III adequately filters out projects that have not demonstrated consistent development such that an alternative path to grandfathering would be justified.

b. Utility Timelines For the Construction of System Modifications Are Estimated At 9-18 Months, And Developers And Investors Must Make Conservative Assumptions.

The SIR does not specify a target timeframe for the phase of the interconnection process that follows the completion of the CESIR and the execution of the Interconnection Contract (“IC”), in recognition of the fact that the work required of the utility at this point in the process is less standardized than the study process. For a sample of remote net metering project requiring standard service work, the IPWG members have observed an average timeline of 312 calendar days, which equates to approximately 216 business days, or a little over 10 months.

⁵ It should be recognized that this limited sample does not reflect the entire population of projects nor does it accurately reflect the average time to perform preliminary reviews and CESIR studies across all the utilities.

This average represents the utility construction period for a sample of projects on which the utility scope corresponded to low levels of PV penetration consistent with the early days of a budding distributed generation market. These early applications were the first large PV facilities installed on their respective circuits, and as a result, did not necessitate significant utility upgrades. Instead, the scope of these interconnections consisted of basic service work – two or three new poles and a primary meter. Many projects with interconnection applications submitted during early 2015 face a different profile of utility upgrades. As the aggregate penetration of distributed generation has increased across the state, utility upgrades and construction scopes have expanded to consistently include provisions for permitting substation level reverse power flow and the management of varying anti-islanding detection methodologies. These more complex utility upgrades are critical for increasing hosting capacity in those areas, but often include substation and transmission-level work that carry expected timelines of 12-18 months.

Furthermore, that timeline estimate is independent of the impact of the surge in interconnection applications that accompanied the June 1, 2015 deadline in the Transition Plan and the opening of the Community DG program. The utilities have explained that, where they may have occurred, delays in the interconnection review process discussed above are at least partly due to these surges in applications. That cohort of applications can be expected to continue to cause congestion as it makes its way through the interconnection process towards its final Authorization to Interconnect; a point of emphasis for the utility members of the IPWG. Understanding that utility construction resources – specifically with regard to the specialized technical resources required for substation upgrades – are generally inflexible, that cohort of projects can be expected to impact construction timelines for certain interconnection upgrade projects.

For developers and investors facing decisions about whether to deploy additional capital for a project, it is not the average interconnection timeline that matters most. Rather, it is the outside range of potential interconnection timelines, coupled with the developer’s inability to enforce a deadline for the utility’s scope, that creates an unduly uncertain environment for further investment. Thus, even though there may be theoretically sufficient time during the 15-16 months from now until the December 31, 2017 deadline to construct and interconnect a project that is ready to move into procurement and construction, investors are hesitant – and will soon be unwilling – to bet on accuracy of the system modifications timelines necessary to place a project in service by the deadline. Therefore, projects for which developers can commit to meeting construction milestones well in advance of the December 31, 2017 deadline are nevertheless becoming increasingly un-investable, owing to the uncertain utility interconnection timelines and resultant threat to grandfathering status.⁶

III. The Commission Could Achieve Its Original Intent of an Orderly Transition to Volumetric Net Metering By Adding an Alternative Grandfathering Criterion That Eliminates Utility Construction Constraints.

Given the new, unanticipated conditions outlined above and their threat to investments already made in the New York solar market and to the NY-Sun goals, we propose an additional test to determine whether projects that were in development as of June 1, 2015 have proceeded through the development process

⁶ It should be recognized that for projects for which the interconnection construction timelines are not a concern, no relief of the December 31, 2017 is necessary or being requested.

at such a pace to justify maintaining their grandfathered status. The original criteria should remain in place to preserve the grandfathered status of any project for which lengthy system modifications timelines are not a concern. Any such project may still pursue qualification through the December 31, 2017 placed-in-service criteria. For projects that face lengthy or uncertain utility construction timeframes, the IPWG proposes a second, four-part milestone, all of which must be met in order for a project to maintain its grandfathered status beyond December 31, 2017. The alternative grandfathering milestones are as follows:

- a.) The project has paid for a CESIR study prior to 7/1/16;
- b.) The project demonstrates – either through a utility construction schedule⁷ or a mutual understanding of industry-standard timelines for the system modifications identified in the CESIR – that upon the receipt of CESIR results, the estimated construction schedule indicated a final Authorization to Interconnect on or after 7/1/17;
- c.) All utility interconnection costs described in the fully-executed Interconnection Contract⁸ for the project must be paid for in full by December 31, 2016⁹; and
- d.) The project demonstrates, by November 30, 2017, based on an affidavit from the engineer of record, that substantially all of the solar equipment on the end-use customer’s side of the point of interconnection has been physically constructed – and its interconnection depends only upon utility construction and receipt of Authorization to Interconnect from the utility.

We do not intend, in proposing these milestones, to extend the transition period away from monetary crediting, nor to create space within the monetary crediting framework for additional projects or capacity. Rather, we contend that in order to ensure vibrant market activity through an orderly transition, the milestones that projects must hit must be reasonably within the developer’s ability to control. It is reasonably within a developer’s ability to control whether a project achieves mechanical completion by a specific date, but the same cannot be said of final permission to operate, which for these projects for which a waiver is being sought is largely within the control of the interconnecting utility, and varies significantly based on the scope of the system modifications identified in the CESIR.

At the time of the April 2015 Order, commenters advocated to the Commission that the phrasing of the grandfathering milestone be changed from “a project must enter service” to “a project must be mechanically complete.” Here, we have suggested an earlier deadline (November 30, 2017) for mechanical completion and the additional milestone relating to payment of utility costs to underscore our genuine intent not to extend the monetary crediting framework to projects that were not intended to be grandfathered when the Commission issued its Order. The four alternative milestones would ensure that a developer had released the utility to perform all necessary work at least a full year before the aimed-for

⁷ In the event that a construction schedule was provided by the utility in the form of a range, the longer end of such range shall be utilized for purposes of the calculation in this criterion.

⁸ In the event that payment in installments has been agreed upon by the utility and customer, payment of the first installment and any other installments that may have been agreed to be paid prior to December 31, 2016 shall satisfy the December 31, 2016 requirement.

⁹ This date assumes that notification of the new criteria will be released by 10/1/16, providing the development community adequate time to secure capital for 100% system modification payments. If the effective date of this policy were to slide, the required date for criteria “c” should be adjusted accordingly.

December 31, 2017 placed-in-service deadline, and had completed all its own work with one month to spare for scheduling and completing the final utility inspection. These are conservative amounts of time for a utility to complete the work it must do to interconnect such resources under normal conditions and expected performance standards for utilities that seek and expect increasing use of DERs. Accordingly, we contend that if a project has met the requirements described above, but is not placed in service by December 31, 2017, it is reasonable to conclude that the failure to meet the deadline was beyond the control of the developer, and the project should not lose its grandfathered status.

A survey conducted by the solar industry members of the IPWG indicates that at least 250MW of projects may qualify for monetary remote net metering. Of those projects, we estimate that between 77MWac and 150MWac will be challenged in achieving the December 31, 2017 deadline, and fit the profile described in Section III. The survey results below reflect applications that have utility construction timelines longer than twelve months, have completed CESIRs, and have no other alternative path to grandfathering through public solicitation or NYSERDA award.

Utility	MWac	Applications
NGrid	67.5	35
O&R	10	5
CHG&E	0	0
NYSEG/RG&E	0	0
ConEd	0	0
Total	77.5	40

Table 1: IPWG Survey of Qualifying Monetary RNM Applications

The data above reflects the active monetary remote net metering portfolios of the six companies surveyed by the solar members of the IPWG. We recognize that the data is not representative of the entire scope of the issue. Based on our knowledge of the industry and a general survey of non-IPWG solar companies, we expect that this data represents between 50% and 66% of the impacted projects.

IV. Conclusion

The adjustment to the milestones in the transition plan that we propose here would not extend monetary grandfathering in time or in scope, but would allow grandfathered projects to proceed using the full time allowed for completion in the Order. The four milestones proposed in Section III were chosen because it would be reasonable to expect that a project meeting those milestones by such dates would be placed in service by December 31, 2017 under normal circumstances. Unfortunately, as demonstrated in Section II, the timelines experienced for some projects that the IPWG members observed between June 2015 and June 2016 exceed the timelines that were anticipated at the time of the Order, and those process delays have created uncertainty for developers and financiers. If, based on the information presented in Section II or other information, the Commission believes that other dates would better accomplish its original objective of an orderly transition, we invite the use of alternative dates; what matters is that the dates apply to milestones that are under the developer’s control.

It is not our intention to in any way resist the transition overall. The IPWG continues to embrace the direction of REV overall, and of the LMP+D component of the proceeding in particular. We believe that the best longer-term, sustainable framework for compensating DERs is to accurately value the resource, to compensate systems accordingly. We are eager to see the implementation of the successor tariff,

knowing that it will force DER providers to adjust their business practices, but welcoming the stability and predictability that a more value-based pricing structure offers.

Sufficient and effective grandfathering of the projects that were in the pipeline at the time of the Order and the June 1, 2015 transition date, however, is a critical component of an orderly transition, and of maintaining momentum for solar development in New York while the work to implement the successor tariff continues. The IPWG respectfully recommends that the Commission give due consideration to the proposed alternative milestone framework: one that will allow solar construction activity to continue and accelerate through 2016 and 2017, and preserve a smooth transition to the successor tariff framework, but without undermining the Commission's objective of transitioning away from the monetary remote net metering framework.

Thank you for your consideration.

The New York Interconnection Policy Working Group