

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on January 18, 2024

COMMISSIONERS PRESENT:

Rory M. Christian, Chair
Diane X. Burman
James S. Alesi
John B. Howard
David J. Valesky
John B. Maggiore

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

ORDER GRANTING RECONSIDERATION AND MODIFYING TARIFF

(Issued and Effective January 18, 2024)

BY THE COMMISSION:

INTRODUCTION

On September 13, 2023, the New York State Energy Research and Development Authority (NYSERDA) submitted a petition (Petition) to address unintended market impacts related to the Public Service Commission's (Commission) April 2023 Order, which established rules for transitioning from the Community Credit to the Community Adder within Consolidated Edison Company of New York, Inc.'s (Con Edison) service territory.¹ The Petition highlights impacts upon the financing of certain distributed solar projects and requests that the Commission reconsider the April 2023 Order and provide relief to these projects by allowing a one-time option to forfeit the Con

¹ Case 15-E-0751, Order Directing Tariff Modifications, (issued April 21, 2023) (April 2023 Order).

Edison Community Credit that was allocated after the exhaustion of the Community Credit Tranche on October 6, 2021. NYSERDA also proposes a reduction to Con Edison's NY-Sun Mega-Watt Block Program to account for excessive NY-Sun incentives provided to certain projects.

In this Order, the Commission approves a one-time option for impacted projects to forfeit the "recycled" Con Edison Community Credit and to opt to receive the Community Adder instead. The Commission also authorizes a one-time option for impacted projects to forfeit the Community Adder and to receive the Con Edison Community Credit instead. The Commission rejects NYSERDA's proposal to reduce the Con Edison NY-Sun Mega-Watt Block program budget by \$544,558 to cover the Community Adder incentives that were awarded and paid to projects inadvertently, and instead directs Con Edison to reduce the term of the Community Credit for the subset of those projects that choose to continue with the Community Credit.

BACKGROUND

On March 19, 2020, the Commission issued the Order Regarding Community Credit and Community Adder Allocations, which continued the availability of the Community Credit and the Community Adder as an alternative.² The Allocation Order required New York State Electric & Gas Corporation (NYSEG), Niagara Mohawk Power Corporation d/b/a National Grid (National Grid), and Rochester Gas and Electric Corporation (RG&E) to reallocate capacity from closed tranches where available capacity remained, to a new Community Credit tranche 2 until November 1, 2020. However, the Commission deferred authorizing

² Case 15-E-0751, Order Regarding Community Credit and Community Adder Allocations (issued March 19, 2020) (Allocation Order).

a Community Adder so it could be addressed as part of NYSERDA's petition to expand the NY-Sun program.

On May 14, 2020, the Commission adopted the expansion of the NY-Sun program and clarified that the Community Adder was limited to solar photovoltaic projects.³ The Commission extended the availability of the Community Adder to the NYSEG, National Grid, and RG&E service territories where the Community Credit incentives were exhausted. The Commission did not extend the Community Adder for Con Edison's service territory since there was significant Community Credit capacity remaining and therefore, not needed at that time.

On April 14, 2022, the Commission adopted the NY-Sun Expansion Order, establishing the availability of a "Community Adder" in Con Edison's service territory after the remaining "Community Credit" capacity is exhausted.⁴ The Community Adder is a per watt NY-Sun incentive paid to the photovoltaic (PV) owner/developer upon attainment of commercial operation. The other NY-Sun incentives are the NY-Sun base incentive and the Multifamily Affordable Housing Incentive. The Community Credit is a per kilowatt-hour incentive paid out by the utilities over 25 years, as per corresponding utility tariffs.

In the April 2023 Order, the Commission directed Con Edison to sunset the recycling of the Community Credit, effective May 1, 2023, and to permanently replace the Community Credit with the Community Adder. The Commission also rejected the Department of Public Service Staff's (Staff) proposal to

³ Case 19-E-0735, NY-Sun Program Funding and Extension of Program Through 2025, Order Extending and Expanding Distributed Solar Incentives (issued May 14, 2020).

⁴ Case 21-E-0629, et al., In the Matter of the Advancement of Distributed Solar, Order Expanding NY-Sun Program (issued April 14, 2022) (NY-Sun Expansion Order).

allow projects in Con Edison's territory that received a Community Adder, but otherwise would be eligible for capacity under the Community Credit Tranches due to project cancelations, a one-time option to forfeit any Community Adder received and to instead select the Community Credit. The Commission found that this aspect of Staff's proposal could introduce market uncertainty and confusion for developers. Finally, the Commission removed the Community Credit Tranche reporting requirements for the Joint Utilities, either when the Community Credit Tranches are exhausted and/or no later than beginning June 1, 2023, whichever occurred first.⁵

THE PETITION

NYSERDA requests that the Commission reconsider its decision in the April 2023 Order and allow solar projects to forfeit the Community Credit that was allocated after the exhaustion of the Community Credit tranche on October 6, 2021. NYSERDA notes that the Community Credit and Community Adder can both benefit the financing and development of distributed solar projects, but switching one for the other during advanced phases of project development can create significant confusion and uncertainty for project financing. The Petition states that the April 2023 Order allowed the projects interconnecting to Con Edison's distribution system that were not previously granted the Community Credit an opportunity to opt into a Community Adder, but did not allow projects already granted the Community Credit to select the Community Adder.

The Petition identifies 46 projects in the NY-Sun pipeline that applied for the NY-Sun higher Community Adder

⁵ The Joint Utilities consist of Con Edison, Central Hudson Gas & Electric Corporation, NYSEG, National Grid, Orange and Rockland Utilities, Inc., and RG&E.

incentive after Con Edison's Tranche Threshold Notice dated October 6, 2021 - exhaustion of the Tranche, and subsequently were granted recycled Community Credit awards. Several of these projects will be serving regulated multifamily housing customers. The Petition states that losing upfront NY-Sun incentives is burdening some of the projects with cashflow challenges and causing difficulty obtaining or maintaining project financier approvals.

Further, NYSERDA adds that a subset of these projects was fully paid the Community Adder or NY-Sun incentives. NYSERDA requests that the Commission allow the impacted projects to exercise a one-time option to reject the subsequently allocated Community Credit where such projects: (i) applied for and, as of the date the Petition was filed, were awarded the higher upfront NY-Sun Incentive or Community Adder; and (ii) were allocated "recycled" Con Edison Community Credit after the exhaustion of the Community Tranche on October 6, 2021. If approved, NYSERDA would consult with Con Edison and file a "Final List" of impacted projects that may choose to exercise the option to forego the Community Credit. NYSERDA proposes that this subset of projects would exercise their option within 60 days of the filing of the Final List.

The Petition further explains that eight projects that were allocated the Community Credit, and are operational, have already received payment of the higher upfront NY-Sun incentive amount, totaling \$544,588 above the amount for which these projects should have been eligible. To avoid negative impacts to ratepayers and any further market disruption, NYSERDA proposes to reduce the NY-Sun budget for Con Edison MW Block Incentives and Adders in that amount. Since identifying this error, NYSERDA notes that it has implemented changes to its invoice review process, including confirming each operational

project's metering status directly with the utility, to correctly identify projects that received allocations of recycled Community Credit subsequent to their NY-Sun award and ensure that the payment amount is adjusted as necessary.

NOTICE OF PROPOSED RULE MAKING

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rule Making (Notice) was published in the State Register on October 4, 2023 [SAPA No. 15-E-0751SP51]. The time for submission of comments pursuant to the Notice expired on December 4, 2023. Comments were received by American Solar Partners (ASP), Best Energy Power (BEP), Brooklyn Solar Works, City of New York (The City), Con Edison, First and Second Housing Companies (Housing Companies), New York State Solar Energy Industries (NYSEIA), Solar One, and YSG Solar. These comments are summarized and addressed below.

COMMENTS

American Solar Partners

ASP supports NYSERDA's Petition. ASP is developing a multi-site solar power project for a large regulated affordable housing complex and was informed that the Con Edison Community Credit was exhausted and thereby altered its financing plan to rely on the NYSERDA multifamily housing incentive. ASP's project was awarded NYSERDA NY-Sun incentives and began construction. Subsequently, ASP's project was informed that the Community Credit was available and it could no longer receive the NYSERDA incentives. ASP states that this change in incentives caused a \$2.2 million funding gap and undermined their financing plan. ASP strongly urges the Commission to allow a one-time option so their project may retain the higher NYSERDA incentives.

Best Energy Power

BEP supports NYSERDA's Petition regarding the transition from the Con Edison Community Credit to the Community Adder. BEP states the NYSERDA is withholding payment to their company for nearly \$1 million of NY-Sun incentives for completed projects. BEP notes their customers are affordable housing properties and they cannot simply cover additional costs prior to the Commission's decision being imposed on them. Further, BEP notes that their company is bearing the financial impacts and it is inappropriate for small businesses to be denied payment of invoices by NYSERDA after they were awarded the incentives. BEP urges the Commission to immediately approve NYSERDA's petition in order to grant relief to impacted projects which could take the form of partial or full payments.

Brooklyn Solar Works

Brooklyn Solar Works supports NYSERDA's Petition. Brooklyn Solar Works notes that NYSERDA is withholding millions of dollars of reserved NY-Sun incentives for completed projects. Brooklyn Solar Works argues that it is not appropriate for small businesses to be denied payment of invoices by NYSERDA when the projects are fully installed and after the project was awarded NY-Sun incentives. Brooklyn Solar Works urges the Commission to allow NYSERDA to grant immediate relief to impacted companies which could be partial or full payments.

The City

The City fully supports NYSERDA's Petition and urges the Commission to approve it. The City notes that NYSERDA highlights the projects that have, in some cases, structured financing arrangements around the upfront Community Adder, with upfront incentives more attractive to financing partners. The City argues that these projects, some being multifamily housing projects, will face challenges to change course on financing

decisions made months ago. Further, the City suggests that the inability to retain the Community Adder has created shortfalls in the millions of dollars, putting mature projects in jeopardy. The City is also concerned that the Commission did not fully appreciate the market impact of rejecting Staff's proposed one-time option when issuing the April 2023 Order and strongly urges the Commission to reconsider in light of the information provided by NYSERDA's petition. The City believes the one-time option to choose between the Community Adder and Community Credit for the limited universe of projects will remove uncertainty. The City requests that the Commission take prompt action to approve NYSERDA's Petition to remove unnecessary barriers to solar development and also authorize NYSERDA to issue full payment for previously-approved NY-Sun incentives as soon as possible.

Con Edison

Con Edison supports NYSERDA's attempt to address the unintended market impacts that followed the Commission's April 2023 Order. Con Edison agrees that a one-time option to reject the Community Credit is appropriate for projects that (i) applied for and were awarded the higher NY-Sun incentive or Community Adder; and (ii) were allocated Con Edison Community Credit after exhaustion of the Con Edison Community Credit tranche. Additionally, Con Edison agrees with the 60-day deadline for interested parties to notify Con Edison of their choice. Lastly, Con Edison supports reducing the Con Edison MW Block program by \$544,558 to cover overpayments made to projects above the amount the projects should have been eligible.

Housing Companies

The Housing Companies support NYSERDA's Petition. The Housing Companies note that the projects' original financing plan relied on the new NYSERDA Multi-Family Affordable Housing

incentives rebate which they were awarded. The housing projects commenced construction based on full reliance of the rebates. The Housing Companies state that they were informed they would be receiving the lower Community Credit. The Housing Companies assert this change in award undermines the financing plan potentially causing a deficiency balance of \$2.2 million, a sum the Housing Companies cannot afford. The Housing Companies strongly urge the Commission to allow the one-time option to take the higher upfront NY-Sun incentives or the Community Credit.

New York State Solar Energy Industries

NYSEIA strongly supports NYSERDA's request that the small number of solar projects that were retroactively allocated recycled Community Credit be granted a one-time option to reject the Community Credit and retain the Community Adder and other higher NY-Sun incentives that they secured based on incentives available at the time of reservation. NYSEIA states that even though the Community Credit may be more valuable than the Community Adder, these changes have proven disruptive for projects in late stages of development and small projects have faced significant hardship for whom the financing was already set. NYSEIA supports the proposal to grant impacted customers with a 60-day period to opt-out of the recycled Community Credit. NYSEIA also recommends that the impacted customers and contractors be able to retain incentives to avoid negative impacts on solar customers and companies. NYSEIA agrees with NYSERDA's recommendation to reduce the Con Edison MW Block program by the incentives already paid to avoid negative impacts on ratepayers. Lastly, NYSEIA recommends that NYSERDA issue full payment for reserved NY-Sun incentives upon a project completion milestone.

Solar One

Solar One supports NYSERDA's request to grant impacted projects that were allocated a recycled Community Credit a one-time option to reject it and retain the Community Adder. Solar One states that it should be a choice and agrees with the 60-day timeline and the inclusion of any project that has become operational. Further, Solar One urges the Commission to reconsider in light of the dire impacts on projects, particularly for multifamily affordable housing and local installers. Lastly, Solar One supports NYSEIA's comments to grant immediate relief to impacted solar contractors and customers.

YSG Solar

YSG Solar supports NYSERDA's Petition. YSG Solar states that they have a late-stage project in the Con Edison territory that is affected by the Commission's April 2023 decision. YSG Solar notes that NYSERDA is withholding millions of dollars of reserved NY-Sun incentives for completed projects. YSG Solar argues that it is not appropriate for small businesses to be denied payment of invoices by NYSERDA when the projects are fully installed and after the project was awarded NY-Sun incentives. YSG Solar urges the Commission to allow NYSERDA to grant immediate relief to impacted companies, which could be partial or full payments.

LEGAL AUTHORITY

The Public Service Law (PSL) grants the Commission broad legal authority to prescribe regulatory requirements necessary to carry out the provisions contained therein. For instance, PSL Section 5(1) grants the Commission jurisdiction over the sale or distribution of electricity. Furthermore, PSL Section 5(2) permits the Commission to "encourage all ...

corporations subject to its jurisdiction to formulate and carry out long-range programs, individually or cooperatively, for the performance of their public service responsibilities with economy, efficiency, and care for the public safety, the preservation of environmental values and the conservation of natural resources."

Pursuant to PSL Section 65(1), every electric corporation must safely and adequately "furnish and provide [electric] service, instrumentalities, and facilities as shall be safe and adequate and in all respects just and reasonable." Section 66(1) extends general supervision to electric corporations having authority to maintain infrastructure "for the purpose of ... furnishing or transmitting electricity." Pursuant to Section 66(2), the Commission may "examine or investigate the methods employed by ... corporations ... in manufacturing, distributing, and supplying ... electricity," as well as "order such reasonable improvements as will best promote the public interest ... and protect those using ... electricity." Moreover, pursuant to Section 66(3) the Commission may prescribe "the efficiency of the electric supply system." Accordingly, the Commission has authority to direct the treatment of Distributed Energy Resources (DERs) by electric corporations, as directed in this Order, to ensure the provision of safe and adequate service at just and reasonable rates consistent with the public interest.

DISCUSSION AND CONCLUSION

The Community Credit and Community Adder were established through various orders in this proceeding to provide incentives for solar development, including within the Con

Edison service territory.⁶ The Community Credit is an incentive provided by Con Edison through the NY-Sun Mega-Watt Block program that is paid out over 25 years. The Community Adder is an upfront payment provided by NYSEERDA, which may be provided along with other NYSEERDA incentives, such as the Multifamily Affordable Housing incentive, once the Community Credit is exhausted, as part of the expanded NY-Sun program.

As noted in the Petition, Con Edison filed a notice on October 6, 2021, stating that the Community Credit tranche was exhausted. However, due to project cancellations, the Community Credit was unencumbered and "recycled" to projects that had previously applied but were denied. At the same time, NYSEERDA awarded the Community Adder to a certain group of projects that were denied the Community Credit. NYSEERDA has preliminarily identified 46 projects that have been awarded the Community Credit instead of the Community Adder. NYSEERDA is requesting to allow projects a one-time option to forfeit the Community Credit and take the Community Adder and other appropriate NYSEERDA incentives. In addition, a subset of eight projects were allocated the Community Credit and have also received NYSEERDA incentives totaling \$544,558 above the amount the projects were eligible for. As a result, NYSEERDA proposes to reduce Con Edison's NY-Sun Mega-Watt Block program budget to avoid negatively impacting ratepayers.

The April 2023 Order rejected Staff's proposal to allow a one-time option for certain Community Distributed Generation (CDG) projects in Con Edison's territory to forfeit any Community Adder received and instead select the Community Credit. The Commission agreed with Con Edison and the other

⁶ See, e.g., Case 15-E-0751, Order Regarding Value Stack Compensation (issued April 18, 2019); NY-Sun Expansion Order.

Joint Utilities, based on the record before it, that Staff's proposal would introduce market uncertainty for developers and may be confusing for developers who are not aware that the Community Credit was being recycled. The Petition presents an alternate approach to Staff's proposal to allow a one-time option for certain projects to forfeit the Community Credit and instead receive the Community Adder. The Petition and commenters have identified unintended consequences of the April 2023 Order warranting reconsideration of the rules provided therein governing the transition from the Community Credit to the Community Adder.

Generally, all commenting parties agreed with NYSERDA's Petition and urge immediate action by the Commission. NYSEIA and several solar developers state that the April 2023 Order had the unintended consequence of forcing solar contracts with projects in advanced stages of development to accept a lower capacity-based incentive that what was included in their NYSERDA incentive reservation. Further, they argue that these incentive changes have proven to be disruptive to projects and resulted in significant hardship for small projects that had financing plans set. Commenters also urge the Commission to allow NYSERDA to grant immediate temporary relief for impacted solar contractors and customers by issuing full payment of reserved NY-Sun payments. Con Edison also supports the Petition to address the unintended financial impacts faced after the April 2023 Order. The City points out that losing the Community Adder and other NY-Sun incentives has impacted several New York City multiple family housing projects that were relying upon receipt of millions of dollars in these upfront incentives.

In light of new information provided by NYSERDA, we find the proposal to allow impacted projects a one-time option to forfeit the awarded Community Credit and to instead receive

the Community Adder a reasonable solution for the projects that were impacted by the April 2023 Order. Similarly, the impacted projects will be allowed to forfeit the Community Adder and instead receive the Community Credit. Switching projects from one incentive to another during advanced stages of the project development created significant confusion and uncertainty to project financing. The one-time option to reject the Community Credit or Community Adder only applies to projects that applied for, as of September 13, 2023, and were awarded the higher NY-Sun incentive or Community Adder and were allocated the "recycled" Community Credit after the exhaustion of the Community Credit Tranche on October 6, 2021.

NYSERDA is directed to consult with Con Edison to develop a "Final List" of impacted projects which will be eligible for the one-time option. We agree with NYSERDA's proposal to allow for a 60-day window, after the "Final List" is posted on Con Edison's Interconnection Online Portal, for projects to exercise this option. Projects that do not notify Con Edison within 60 days of their selection will have their NY-Sun incentives adjusted accordingly. Further, the Commission agrees that projects that are, or become operational, but have not yet been paid NY-Sun incentives as of this Order, be eligible to exercise the one-time option and have the Community Credit removed going forward.

The Petition also highlights the overpayment of NY-Sun incentives totaling \$544,558 to eight projects that received the incentives in error. Projects cannot receive both the Community Credit and the Community Adder incentives. These eight projects were awarded the Community Adder initially, and subsequently awarded the Community Credit. Therefore, if these projects choose to forfeit the Community Adder and instead receive the Community Credit, they should receive a reduced amount of

Community Credit incentives to account for the Community Adder incentive dollars already paid to them. To effectuate this, Con Edison is ordered to reduce the term of the Community Credit for those projects that choose this option, from 25 years to 17 years.⁷ This reduction in payment years should be communicated directly with the affected projects in written form. With this decision, the Commission finds NYSERDA's proposal to reduce the Con Edison MW Block program by \$544,558 to address the overpayment of incentives and avoid negative impact to ratepayers to be unnecessary and therefore it is rejected. We do stress that, in light of the overpayments, NYSERDA shall continuously review its internal controls and changes implemented to the invoice review process, including confirmation of a project's status with the utility, to avoid this or similar errors from occurring again.

Finally, the Commission directs Con Edison to file tariff amendments consistent with this Order, on not less than seven days' notice, to become effective on February 1, 2024, to allow a one-time option to select either the Community Credit or the Community Adder. This selection will only be applicable for projects allocated a Community Credit between October 6, 2021, and May 1, 2023, and contained on the list provided by NYSERDA. This will provide clarity and market certainty to customers and developers by allowing for a transparent transition process to switch CDG project incentives from the Community Credit to the Community Adder. As these tariff revisions will be filed in

⁷ Assuming the eight solar projects total 492 kW of installed capacity, as provided by NYSERDA, and that they have an average capacity factor of 14 percent, the total annual Community Credit equates to \$72,407 ($492 \times 8760 \times 0.12 \times 0.14$) assuming the Con Edison Community Credit rate of \$0.12/kWh. The \$544,558 of overpayments is approximately equal to 8 years of Community Credit payments.

compliance with this Order, and stakeholders have already had an opportunity to provide comment, the newspaper publication requirements of PSL §66(12)(b) and 16 NYCRR §720-8.1 are waived.

The Commission orders:

1. Consolidated Edison Company of New York, Inc. is directed to reduce the 25-year term of scheduled payments of the Community Credit to the subset of eight projects who received the Community Adder overpayment, and choose to continue receiving the Community Credit, by eight years so that the total term of payments shall represent 17 years.

2. Consolidated Edison Company of New York, Inc. is directed to work with the New York State Energy Research and Development Authority to develop a final list of impacted projects within 60 days of the issuance of this Order.

3. Consolidated Edison Company of New York, Inc. is directed to file tariff leaves implementing the revisions discussed in the body of this Order, on not less than seven days' notice, to become effective on February 1, 2024.

4. The requirements of Public Service Law §66(12)(b) and 16 NYCRR §720-8.1 as to newspaper publication of the tariff revisions directed in Ordering Clause No. 3 are waived.

5. The New York State Energy Research and Development Authority shall file a revised NY-Sun Operating Plan within 180 days of the issuance of this Order.

6. 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 three days prior to the affected deadline.

7. This proceeding is continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary