STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on May 13, 2021

COMMISSIONERS PRESENT:

John B. Howard, Interim Chair
Diane X. Burman, concurring, in part and dissenting, in part
James S. Alesi
Tracey A. Edwards

CASE 19-E-0079 - In the Matter of the Continuation of Standby Rate Exemptions.

ORDER CONTINUING CERTAIN EXEMPTIONS TO STANDBY RATES

(Issued and Effective May 14, 2021)

BY THE COMMISSION:

INTRODUCTION

The Public Service Commission (Commission) has provided long-standing guidance that standby delivery service is sufficiently different from full delivery service to justify some difference in treatments, as standby service is a specialized form of retail delivery service.[1] As the Commission previously stated, "a standby service customer is essentially a customer which normally does not obtain all of its energy via deliveries through the utility's transmission and distribution grid."[2] When the Commission adopted standby rates in each of the major investor-owned electric utilities' standby rate

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[1] Case 99-E-1470, Electric Standby Service, Opinion and Order Approving Guidelines for the Design of Standby Service Rates (issued October 26, 2001).

[2] Id., p. 4.

proceedings,[3] it also directed that customers with certain forms of distributed energy resources (DER) and small efficient combined heat and power (CHP) shall have the option of being exempt from those rates.[4] The initial exemption for most utilities was set to expire as of May 31, 2006, while the exemption initially approved for National Grid was set to expire in August 2005. Those dates were subsequently extended to May 31, 2021. Existing exemptions to standby rates are currently effective only for applicable DER and CHP facilities interconnected and energized on or before May 31, 2021.

The current deadline was established by the May 16, 2019 Order Continuing Standby Rate Exemptions,[5] which

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[3] The major investor-owned 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 (National Grid), Rochester Gas & Electric Corporation (RG&E), and Orange and Rockland Utilities, Inc. (O&R) (collectively, the Joint Utilities).

[4] Case 02-E-0551, Rochester Gas & Electric Corporation, Order Establishing Electric Standby Rates (issued July 29, 2003) (RG&E Standby Order); Case 02-E-0779, New York State Electric & Gas Corporation, Order Establishing Electric Standby Rates (issued July 30, 2003) (NYSEG Standby Order); Case 02-E-0780 and 02-E-0781, Orange & Rockland Utilities, Inc., and Consolidated Edison Company of New York, Inc., Order Establishing Electric Standby Rates (issued July 29, 2003) (O&R and Con Edison Standby Order); Case 02-E-1108, Central Hudson Gas & Electric Corporation, Order Establishing Electric Standby Rates (issued December 4, 2003) (Central Hudson Standby Order); and Case 01-E-1847, Niagara Mohawk Power Corporation, Order Approving Joint Proposal (June 21, 2002) (NMPC Standby Order) (collectively, the Original Standby Rate Orders).

[5] Case 19-E-0079, Standby Rate Exemptions, Order Continuing Standby Rate Exemptions (issued May 16, 2019) (2019 Exemptions Order).

established the expectation that the exemptions to standby rates would be examined periodically.

By this Order, the Commission continues the existing exemptions for technologies included in Public Service Law (PSL) §§66-j and 66-l, renewable generating technologies, and energy storage systems, and ends the exemptions related to CHP. In addition, the Commission directs updated procedures for future review of these standby rate exemptions. These new processes will allow the exemptions related to PSL §§66-j and 66-l to continue until and unless the PSL is modified, and establishes a recurring biennial review procedure for exemptions related to renewable generating technologies and energy storage systems.

BACKGROUND

The existing exemptions to standby rates fall into one of six categories. Each of these exemptions require customers to have completed installation of their respective generating technologies by May 31, 2021, and are set to expire thereafter.

The first exemption is related to residential and small commercial non-demand customers. Since the inception of standby rates in the Original Standby Rate Orders, residential and small commercial non-demand customers have been exempted from paying standby rates.[6]

The second exemption category applies to certain combinations of customer type and generation capacity for a

[6] Original Standby Rate Orders.

number of technologies specified in PSL §§66-j[7] and 66-l,[8] which effectively prohibit relevant customers from being charged Standby Rates.

Both PSL §§66-j and 66-l specify that a utility may charge its demand-billed customers based on their demand, provided that the kW demand for such demand charges is determined by the maximum measured kW demand actually supplied by the utility to the customer-generator during the billing period. Since standby rates are charged on the basis of contract demand, which is defined as the maximum possible demand a customer may draw, and daily as-used demand, defined as the sum of maximum daily demands during one or more on-peak or super-peak periods, standby rates are incompatible with the demand-based rates allowed under the PSL.

The third exemption category was directed by the Original Standby Rate Orders and relates to certain defined environmentally beneficial technologies. These "Designated Technologies" are mostly renewable generation, designated as exempt in most utility service territories. These same exemptions were made effective in all investor-owned utility

[7] PSL §66-j applies to: (1) solar photovoltaic systems 25 kilowatt (kW) or less for residential customers, 100 kW or less for farm service customers, and 2,000 kW or less for non-residential customers; (2) farm-waste electric generating equipment 2,000 kW or less; (3) micro-CHP installations between 1 kW and 10 kW; (4) fuel cell systems 10 kW or less for residential customers and 2,000 kW or less for non-residential customers; and (5) micro-hydro systems 25 kW or less for residential customers, and 2,000 kW or less for non-residential customers.

[8] PSL §66-l applies to: wind systems 25 kW or less for residential customers, 500 kW for farm service customers, and 2,000 kW or less for non-residential customers.

service territories in 2011.[9] The Designated Technologies include fuel cells, wind, solar thermal, solar photovoltaic, sustainably managed biomass, tidal, geothermal, and methane waste. While there is some overlap between technologies included in PSL §§66-j and 66-l, the Designated Technologies exemption was approved with no generation capacity or customer type limitations for the applicable technologies, with the exception of National Grid.[10]

The fourth exemption category relates to energy storage systems. This exemption was first implemented as part of Con Edison's 2016 rate proceeding,[11] and has since been implemented at most other utilities as part of their subsequent rate proceedings.[12] Exemptions related to energy storage systems differ somewhat between utilities, with Con Edison, O&R, and National Grid each having a maximum inverter capability of 1 megawatt (MW) or less, whereas Central Hudson's exemption has no such maximum size. There is currently no energy storage system exemption in place at NYSEG or RG&E.

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[9] Case 11-E-0279, Griffiss Utility Services Corporation and UTC Power Corporation - Standby Rate Exemptions, Order Granting Petition in Part and Directing a Tariff Filing (issued September 19, 2011). The Designated Technologies exemption is referred to as the "Environmentally Advantageous Technologies" exemption at National Grid.

[10] National Grid applies the same maximum capacity requirements of PSL§§ 66-j and 66-l to relevant technologies.

[11] Case 16-E-0060, Con Edison - Rates, Order Approving Electric and Gas Rate Plans (issued January 27, 2017).

[12] Case 17-E-0238, National Grid - Rates, Order Adopting Terms of Joint Proposal and Establishing Electric and Gas Rate Plans; Case 17-E-0459, Central Hudson - Rates, Order Adopting Terms of Joint Proposal and Establishing Electric and Gas Rate Plan (issued June 14, 2018); Case 18-E-0067, O&R - Rates, Order Adopting Terms of Joint Proposal and Establishing Electric and Gas Rate Plans (issued March 14, 2019).

Fifth, efficient CHP facilities,[13] with capacity of 1 MW or less, have also been exempt from paying standby rates since the Original Standby Rate Orders. Finally, the sixth category was established, beginning in 2015, for efficient CHP facilities greater than 1 MW and less than or equal to 15 MW. This exemption from paying standby rates is applied for a limited period of four years from the date such facilities are placed in-service.[14]

NOTICE OF PROPOSED RULE MAKING

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rulemaking was published in the State Register on February 10, 2021 [SAPA No. 19-E-0079SP2]. The time for submission of comments pursuant to the Notice expired on April 12, 2021. The comments received are addressed below.

COMMENTS

Seven sets of comments were submitted from the following parties: the Alliance for Clean Energy New York (ACE NY); Bloom Energy Corporation (Bloom Energy); Burrstone Energy Center (Burrstone); the City of New York (the City); the Joint Utilities; the Northeast Clean Heat and Power Initiative, 2G Energy, AB Energy USA, Caterpillar, Cogen Power Technologies LLC, Dalkia Aegis EDF Group, Digital Energy Corp, E Cubed

[13] The thermal and electrical efficiency requirements for CHP were established in Case 02-E-0551, et al., Filings to Establish New Standby Services, Order Directing Modifications to Standby Service Tariffs (issued January 23, 2004). At certain utilities, the standards have been subsequently modified as part of a rate proceeding.

[14] Case 14-E-0488, Standby Rate Exemptions, Order Continuing and Expanding the Standby Rate Exemption (issued April 20, 2015).

Company LLC, Energy Concepts, Kinsley Group, and Solar Turbines Incorporated (collectively, NECHPI); and the National Fuel Cell Research Center (NFCRC). The comments submitted were similar and fell into two groups: those parties that believe that the existing exemptions should be extended as-is for a period of time (Exemption Proponents), and the Joint Utilities, which suggest limited exemptions.

The Exemption Proponents request that the existing exemptions be extended for a number of years – ACE NY, Bloom Energy, Burrstone, the City, and NECHPI each recommend a two-year extension until May 31, 2023; whereas NFCRC recommends a three-year extension until May 31, 2024. The Exemption Proponents universally note that the 2019 Exemptions Order premised continuing the then-existing standby rate exemptions for a period of two years with the expectation that review and reform of standby rates, as part of the Value of Distributed Energy Resources (VDER) proceeding in Case 15-E-0751, would have been completed by the current exemption sunset date of May 31, 2021. The Exemption Proponents point out that while significant progress has been made as part of the VDER proceeding, consideration of standby rate issues is still ongoing, and would certainly not be completed prior to May 31, 2021, and may not be completed for some time thereafter. The Exemption Proponents note that the conditions which warranted an extension when the Commission considered this issue in 2019 still remain and, therefore, request that the Commission extend the existing exemptions as-is once again.

Several of the Exemption Proponents also make technology-specific arguments for extending the current exemptions. Both ACE NY and NFCRC note that continuation of the standby rate exemption is critical since other programs and funding which have provided support for certain technologies beyond that provided by the standby rate exemptions (for example those run by the New York State Energy Research and Development Authority (NYSERDA)) have also expired.

Several of the Exemption Proponents note that the technologies covered under the existing exemptions would provide environmental benefits in the short term. ACE NY, Burrstone, NECHPI, and Bloom Energy note that CHP and fuel cells can provide carbon dioxide emissions savings compared to current marginal generation-related emissions rates. Bloom Energy and NFCRC both note that development of fuel cells and other forms of distributed generation today would not lock in fossil fuel-fired generation beyond 2040. Bloom Energy and NFCRC note that fuel cells provide various resiliency benefits and offer customers an alternative to diesel-fired backup generation.

The Joint Utilities support a limited extension of the current exemptions for some technologies, but recommend that the Commission allow the exemptions related to CHP to expire on May 31, 2021. Similar to the Exemption Proponents reasoning, the Joint Utilities argue that the exemptions for non-greenhouse gas emitting technologies should be extended for one year, until May 31, 2022, to provide rate certainty until the Commission completes its review of standby rates in the VDER proceeding. Regarding CHP, the Joint Utilities note that the further subsidies for fossil fuel-fired generators that foster ground-level pollution runs contrary to the goals of the Climate Leadership and Community Protection Act (CLCPA), especially with regard to the CLCPA’s focus on decreasing greenhouse gas emissions and improving local air quality in disadvantaged communities. Therefore, the Joint Utilities request that the Commission end both the lifetime exemption for CHP units 1 MW or less, and the four-year exemption for CHP units greater than 1 MW up to 15 MW.

LEGAL AUTHORITY

Section 5 of the PSL grants the Commission with broad powers and jurisdiction over electric corporations, including the power to "encourage electric corporations to formulate and carry out long-range programs . . . for . . . the preservation of environmental values and the conservation of natural resources."[15] The Joint Utilities' standby service rate exemptions and the renewable distributed generation encouraged by such exemptions preserve environmental values and conserve natural resources. PSL §65 grants the Commission power to establish service classifications and authorize rates and charges for such classifications, such as those charges approved by this Order.[16] PSL §66 authorizes the Commission to examine, investigate, and prescribe changes in rates and charges. By this Order, the Commission directs tariff amendments consistent with the statutory authority granted by the PSL.

DISCUSSION AND CONCLUSION

As noted by each of the commenters, despite the Commission's expectation in 2019 that the issues surrounding design of standby rates would be settled by the time it was necessary to reconsider the exemptions to such rates, these issues remain an open topic of consideration in the VDER proceeding. As noted by commenters, significant progress has been made toward developing reforms to those standby rates, and significant modifications to such rates are currently before the Commission for consideration. While final action has not been taken yet on standby rate design, the landscape of what such rates might look like is much clearer now in 2021 than it was in

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[15] PSL §5(2).

[16] PSL §65(5).

2019. Even so, there are multiple reasons to provide support for certain beneficial technologies whose generation profiles may or may not lend themselves to the standby rate structure which they would otherwise be required to pay, and conversely, to end the exemption for other technologies with traits that do not support the CLCPA and State goals.

Accordingly, the Commission directs the Joint Utilities to file updated tariffs continuing the exemption to standby rates related to PSL §§66-j and 66-l technologies. This exemption shall not sunset, but will be reviewed again if modifications are made to either PSL §§66-j or 66-l. Department of Public Service Staff (Staff) is expected to make a recommendation to the Commission as to whether to maintain, eliminate, or modify these exemptions in the event that such consideration is necessitated by changes to PSL §§66-j or 66-l.

The Commission agrees with all of the commenters that the Designated Technologies exemption,[17] the energy storage exemptions implemented in various rate proceedings, and the residential and small commercial non-demand customer exemptions should continue until the Commission has completed its review of standby rates in the VDER proceeding. As noted by multiple commenters, however, the actual date by which this important work will be fully completed is somewhat unclear. However, the Commission anticipates that progress will be made in the near future and directs the Joint Utilities to file tariff amendments continuing these exemptions for an additional two years.

As noted in the Background section of this Order, there is currently a significant level of inconsistency among the Joint Utilities regarding the details of how the Designated

[17] The Designated Technologies include: fuel cells, wind, solar thermal, solar photovoltaic, sustainably managed biomass, tidal, geothermal, and methane waste.

Technologies and energy storage exemptions are implemented. For example, most utilities allow systems of any size, provided that they meet the technology requirements, while National Grid limits relevant technologies to the size limits included in the PSL §§66-j and 66-l. In addition, the energy storage exemption is limited to systems of 1 MW of inverter capability or less at Con Edison, O&R, and National Grid, not limited at all at Central Hudson, and not present at all at NYSEG and RG&E. The Commission seeks to align the exemptions across the utilities and therefore directs the Joint Utilities to review their various exemptions and to file a proposal to harmonize the Designated Technologies exemption, energy storage exemption, and any other standby rate exemptions within 60 days of the effective date of this Order.

The exemptions to standby rates related to CHP, both the lifetime exemption for CHP units up to 1 MW and the limited four-year exemption for CHP units more than 1 MW up to 15 MW, will not be extended. Although the Commission recognizes the Exemption Proponents' comment that the CHP emissions rates are below the current marginal emissions rate for the electric grid, this will not always be the case as more of the energy generated in New York comes from renewable resources. Further, the Commission agrees with the Joint Utilities' comment that continuing subsidies for CHP is at odds with the CLCPA's focus on rapid deployment of renewable resources.

The Joint Utilities are directed to file tariff revisions as necessary to implement the modifications to the standby rate exemptions discussed above. These revisions shall be filed to be effective on June 1, 2021, on not less than 10 days' notice. As these tariff revisions will be filed in compliance with this Order, the newspaper publishing requirements of PSL §66(12)(b) and 16 NYCRR §720-8.1 shall be waived.

<u>The Commission orders</u>:

1. Central Hudson Gas and Electric Corporation; Consolidated Edison Company of New York, Inc.; New York State Electric and 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 as necessary to implement the exemption to standby rates related to Public Service Law §§66-j and 66-l, as discussed in the body of this Order, to be effective on a temporary basis on June 1, 2021, on not less than 10 days' notice.

2. Central Hudson Gas and Electric Corporation; Consolidated Edison Company of New York, Inc.; New York State Electric and 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 as necessary to extend existing exemptions to standby rates for residential customers, small commercial non-demand customers, and Designated Technologies/Environmentally Advantageous Technologies, for a period of two years, as described in the body of this Order, to be effective on a temporary basis on June 1, 2021, on not less than 10 days' notice.

3. Central Hudson Gas and Electric Corporation; Consolidated Edison Company of New York, Inc.; New York State Electric and 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, as necessary to eliminate standby rate exemptions for

Combined Heat and Power systems put in service after May 31, 2021, as described in the body of this Order, to be effective on a temporary basis on June 1, 2021, on not less than 10 days' notice.

4. Central Hudson Gas and Electric Corporation; Consolidated Edison Company of New York, Inc.; New York State Electric and Gas Corporation; Niagara Mohawk Power Corporation d/b/a National Grid; Orange and Rockland Utilities, Inc.; and Rochester Gas and Electric Corporation shall file a proposal, as discussed in the body of this Order, to harmonize the Designated Technologies exemption, energy storage exemption, and any other standby rate exemptions, within 60 days of the effective date of this Order.

5. 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.

6. The requirements of Public Service Law §66(12)(b) and 16 NYCRR §720-8.1, as to newspaper publication with respect to the tariff filings directed in this Order, are waived.

7. This proceeding is continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary