

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on June 20, 2024

COMMISSIONERS PRESENT:

Rory M. Christian, Chair  
James S. Alesi  
David J. Valesky  
John B. Maggiore, concurring  
Uchenna S. Bright  
Denise M. Sheehan, recusing

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

ORDER ADDRESSING CUSTOMER BENEFIT CONTRIBUTION CHARGES

(Issued and Effective June 21, 2024)

BY THE COMMISSION:

INTRODUCTION

On July 16, 2020, the Public Service Commission (Commission) issued the Net Energy Metering (NEM) Successor Order, which found, among other things, that NEM has successfully provided incentives for the development of clean distributed generation in New York through its simple design and effective mechanism.<sup>1</sup> The NEM Successor Order also concluded that customers not participating in NEM have been burdened with cost shifts from those participating in NEM. Furthermore, the Commission has observed that, when coupled with traditional volumetric rate structures, NEM does not provide sufficient information to serve as a basis for efficient investment

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<sup>1</sup> Case 15-E-0751, Order Establishing Net Metering Successor Tariff (issued July 16, 2020) (NEM Successor Order).

decisions or to identify and compensate for the values that can be provided to the system.<sup>2</sup> Based on these circumstances, the Commission directed that customers installing certain distributed energy resources (DERs), which are interconnected on or after January 1, 2022, shall be charged a monthly Customer Benefit Contribution (CBC) charge to recover the costs for certain energy efficiency and other public policy benefit programs.<sup>3</sup> The CBC charge is based on the compensation option chosen (e.g., Phase One NEM), customer class (i.e., residential, small non-demand commercial, or commercial under 750 kilowatts (kW), and the applicable utility service territory.

Based on Department of Public Service Staff's (DPS Staff) review, it was identified that the Joint Utilities are inconsistently applying the CBC charge in situations where a DER project was interconnected prior to the implementation of the CBC charge, but subsequently underwent a new interconnection request to incrementally increase the size of the project on or after January 1, 2022.<sup>4</sup> While some utilities are applying the CBC charge to the entire DER project, other utilities are applying the CBC charge to only the expanded capacity portion of the project. On April 25, 2023, a notice was issued soliciting

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<sup>2</sup> Case 15-E-0751, Order on Net Energy Metering Transition, Phase One of Value of Distributed Energy Resources, and Related Matters (issued March 17, 2017) (2017 Value of Distributed Energy Resources (VDER) Transition Order).

<sup>3</sup> NEM Successor Order, p. 22.

<sup>4</sup> The Joint Utilities include: Central Hudson Gas & Electric Corporation; Consolidated Edison Company of New York, Inc.; New York State Electric & Gas Corporation; Niagara Mohawk Power Corporation d/b/a National Grid; Orange and Rockland Utilities, Inc.; and Rochester Gas and Electric Corporation.

comments on a DPS Staff Proposal (the Proposal) to address the need for consistent implementation of the CBC charge.<sup>5</sup>

In this Order, the Commission addresses the Proposal and the comments received in response. As discussed below, the Commission modifies the recommendations in the Proposal and directs the Joint Utilities to file tariff revisions applying the CBC charge in two ways. One, for DER systems that were interconnected prior to January 1, 2022, whose capacity was subsequently expanded incrementally on or after January 1, 2022, there shall be no CBC charge applied to the original capacity or expanded incremental capacity. Two, for DER systems interconnected prior to January 1, 2022, only complete system replacements shall be charged the CBC charge, which shall apply to their entire capacity beginning on September 1, 2024, if not already applied. The Commission also directs the Joint Utilities to provide the calculation of the CBC charge on the corresponding customer utility bills within six months of this Order. Relatedly, in that the Long Island Power Authority (LIPA) previously approved imposition of the CBC charge in December 2021, we encourage LIPA to continue to align its CBC charge administration with the terms outlined in the body of this Order.

#### BACKGROUND

The transition away from NEM began with the 2017 VDER Transition Order, which established the Phase One NEM and VDER Value Stack compensation mechanisms for DERs. The Order provided for a phased approach to transitioning from NEM by establishing Phase One NEM, which was identical to original NEM, except that it established payments for a term of 20 years from

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<sup>5</sup> Case 15-E-0751, Notice Soliciting Comments (issued April 25, 2023).

the date of interconnection, with no cash out payments of any excess credits. Subsequently, in the VDER Compensation Order, the Commission authorized projects with a rated capacity of up to 750 kW the option to receive Phase One NEM if interconnected before January 1, 2020.<sup>6</sup> This date was extended to January 1, 2021, by the Secretary to the Commission in response to a DPS Staff extension request to avoid confusion and uncertainty regarding the proposed successor tariff.<sup>7</sup> This date was later extended to January 1, 2022, in the NEM Successor Order.

The NEM Successor Order responded to DPS Staff's recommendations in the Staff Whitepaper.<sup>8</sup> Because of the success NEM had experienced due to its simple design and attractive compensation method (volumetric crediting)<sup>9</sup>, the Commission decided that retaining Phase One NEM would be the best means of continuing to support DER development, while also starting the process of addressing the cost shifts inherent in NEM, as referenced above. That process began in response to the NEM Successor Order, where the Commission applied the CBC charge to DERs interconnected on or after January 1, 2022, as a means to begin recovery of public benefit program costs from mass-market customers. As the Commission explained, "[t]he CBC amounts are relatively minor in comparison to the total estimated cost shifts identified in the [Staff] Whitepaper, but represent an

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<sup>6</sup> Case 15-E-0751, Order Regarding Value Stack Compensation, (issued April 18, 2019) (VDER Compensation Order).

<sup>7</sup> Case 15-E-0751, Ruling on Extension Request (issued December 20, 2019).

<sup>8</sup> Case 15-E-0751, Staff Whitepaper on Rate Design for Mass Market Net Metering Successor Tariff (filed December 9, 2019) (Staff Whitepaper).

<sup>9</sup> Volumetric crediting converts DER system production exported to the grid to kWh credits appearing on the customer bill.

important first step, and ensure that certain Phase One NEM customers fairly contribute to these important programs.”<sup>10</sup>

#### THE PROPOSAL

In terms of applying the CBC charge to customer utility bills, DPS Staff identified situations in which some solar photovoltaic (PV) systems, which expanded capacity on or after January 1, 2022, were being charged the CBC inconsistently. In particular, some utilities applied the CBC charge to only the incremental expanded capacity of the system, while others applied the CBC charge to both the existing system and the incremental expanded capacity. To address this situation, a Notice Soliciting Comments was issued on April 25, 2023, seeking comments on DPS Staff’s proposal regarding the inconsistent implementation of the CBC charge for DER projects that subsequently underwent a new interconnection request to increase the size of the project capacity after January 1, 2022. The Proposal suggested that: (1) for DERs that expand their project size after September 1, 2023, the entire project should be subject to the CBC charge; (2) the Joint Utilities’ electric tariffs should be amended to specify how the CBC charge is applied for DER systems expanded after September 1, 2023; and (3) the Joint Utilities should be required to include the calculation of the CBC charge (i.e., the stated rate multiplied by the customer’s specific system size) on customer bills.

#### NOTICE OF PROPOSED RULE MAKING

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rule Making (Notice) regarding the Proposal was published in the State Register on

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<sup>10</sup> NEM Successor Order, pp. 20-21.

May 17, 2023 [SAPA No. 15-E-0751SP50]. The time for submission of comments pursuant to the Notice expired on July 17, 2023. Comments were received from 1) Advanced Energy United (United), the Alliance for Clean Energy New York (ACE NY), and the Solar Energy Industries Association (SEIA), 2) the New York Solar Energy Industries Association (NYSEIA), 3) SUNation Energy (SUNation), and 4) the Joint Utilities. The Joint Utilities also submitted reply comments.

COMMENTS

United, ACE NY, and SEIA

In jointly filed comments, United, ACE NY, and SEIA disagree that the entire project capacity should be subject to the CBC charge and believe that doing so will act as a disincentive for project owners to increase capacity. Further, United, ACE NY, and SEIA add that New York State should be encouraging as much capacity to be deployed as possible, given its aggressive clean energy goals.

United, ACE NY, and SEIA argue that the Proposal does not directly address projects that were expanded between January 1, 2022, and September 1, 2023, but interpret the Proposal to imply that their treatment would be unchanged. United, ACE NY, and SEIA recommend that all projects that expanded capacity between January 1, 2022, and September 1, 2023, only have the incremental portion subject to the CBC, including those projects that are currently having the CBC applied to the entire project.

However, United, ACE NY, and SEIA support the other aspects of the Proposal, namely that the Joint Utilities' electric tariffs should be amended to specify how the CBC charge is applied to DER projects expanded after September 1, 2023, as this will provide the transparency needed to publicly ensure

that each individual utility is properly and consistently applying the CBC charge, as directed by the Commission. They also support DPS Staff's recommendation that the Joint Utilities be required to include, directly on the utility's bill, the calculation of the CBC charge, which should include the stated per kW rate multiplied by the customer's specific project capacity (or in the case of legacy projects expanded after January 1, 2022, the applicable incremental project capacity).

NYSEIA

NYSEIA concurs with DPS Staff's assertion that the provisions implementing the CBC charge must be consistently applied statewide to provide DER projects with market certainty. NYSEIA, however, opposes the first element of DPS Staff's proposal, which states that for projects that expand their size after September 1, 2023, the entire project (including any capacity that was first placed in service prior to the implementation date) would be subject to the CBC charge. NYSEIA argues that retroactively applying the CBC charge to previously exempt DER capacity sets a concerning precedent that contradicts the expectation set by the NEM Successor Order, which explicitly stated that only projects interconnected "on or after January 1, 2022" would be subject to the CBC. NYSEIA also recommends that the Commission modify the DPS Staff Proposal and order that, for previously exempt projects that subsequently expand their size, only the incremental additional capacity be subject to the CBC. Lastly, NYSEIA supports the other two elements in the Proposal whereby the Joint Utilities' electric tariffs should be amended to specify how the CBC charge is applied for DER systems expanded after September 1, 2023, and that the Joint Utilities should be required to include the calculation of the CBC charge on the utility bill.

SUNation

SUNation opposes the part of the Proposal to subject the entire project to the CBC charge where such project expands its size after September 1, 2023, regardless of when the project was first placed into service. SUNation believes that this Proposal would contradict the NEM Successor Order, which subjected the CBC charge to projects interconnected on or after January 1, 2022. SUNation encourages the Commission to modify the Proposal so that customers who expand their existing systems will only be subject to the CBC charge for the add-on portion. Further, SUNation argues that since there was a discrepancy between the policies put into place as of January 1, 2022, and the proposed policy going into effect September 1, 2023, that those customers receive a credit for erroneous charges that were charged for the entire system. SUNation supports the aspect of the Proposal that recommends the utility bill accurately illustrate how the CBC charge is calculated each month so customers can see that the charges are only for the expansion of the system.

Joint Utilities

The Joint Utilities' initial comments agree that a uniform approach is appropriate to ensure consistent treatment in implementing the CBC charge. To the extent necessary, the Joint Utilities agree that they will conform their tariffs and/or utility bills to comply with DPS Staff's three proposals, upon a Commission determination. The Joint Utilities note that the requirement to include the calculation of the CBC on the utility bill will necessitate complex coding changes in each of the Joint Utilities' billing systems that will need to be prioritized, tested, and implemented. Further, the Joint Utilities state that the timing of the implementation of this requirement will vary by utility.

The Joint Utilities' reply comments reiterate their support for the Proposal and believe that the Commission should reject the positions advanced by parties opposing the application of the CBC charge to the entire DER project, if expanded after September 1, 2023, because it is inconsistent with the treatment of other assets receiving compensation under VDER. The Joint Utilities argue that the distinction between the original kW rating and the new kW rating for the purposes of the CBC charge is inconsistent with the majority of the utilities' practices, which treat the entire kW system as a single customer for billing and compensation purposes. The Joint Utilities add that a bifurcated billing scheme for the CBC charge will likely create customer confusion. They also mention that such an approach has not been adopted for any other element of VDER billing. Further, the Joint Utilities note that NEM and Phase One NEM customers have benefited for some time at the expense of non-participating customers, and that collecting the CBC charge on the entire project is a small step towards correcting the imbalance. The Joint Utilities argue that DER customers should contribute toward the public policy programs and adoption of DPS Staff's Proposal provides a more equitable cost allocation.

#### 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 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 Commission designed the CBC charge to begin recovery of public benefits program costs from mass-market customers installing DERs, including solar PV as well as other technologies, and therefore reduce the cost shifts to other ratepayers. The Commission found that the CBC charge amounts being applied are relatively minor in comparison to the total estimated cost shifts and are an important first step to ensure

that Phase One NEM customers fairly contribute to these programs that create broad societal benefits, some of which solar PV customers take advantage of themselves.<sup>11</sup> However, the NEM Successor Order did not specifically address how to apply the CBC charge for projects installed before January 1, 2022, which subsequently either made an incremental expansion to the capacity of their DER systems or that completely replaced their systems.

DPS Staff reviewed current utility practices regarding the implementation of the CBC charge on projects that have been expanded and found that the CBC charge is being inconsistently implemented by the Joint Utilities. The Proposal recommended that, for DERs that incrementally expand their capacity after September 1, 2023, the entire project should be subject to the CBC charge and the Joint Utilities' electric tariffs should be amended to address the application of the CBC charge accordingly. Staff's Proposal also recommended that the Joint Utilities should be directed to include the calculation of the CBC on customer's utility bills.

The Joint Utilities agree with DPS Staff's overall proposal that there should be a uniform approach to the application of the CBC charge, and contend that adopting the Proposal provides a more equitable cost allocation toward public policy goals. In their initial and reply comments, the Joint Utilities argue against bifurcating the CBC charge between the original system kilowatt (kW) capacity and the expanded incremental kW capacity rating. The Joint Utilities state that the CBC charge is inconsistent with most of the Joint Utilities' practices which treat the entire kW system as a single customer for billing and compensation purposes under VDER. Moreover, the

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<sup>11</sup> NEM Successor Order, pp. 20-21.

Joint Utilities explain that a bifurcated billing scheme will likely create customer confusion. The Joint Utilities further note that the calculation of the CBC charge on customer's bills will take time and that implementation may vary by utility due to changes needed to upgrade their respective billing systems.

United, ACE NY, and SEIA oppose DPS Staff's suggestion to apply the CBC charge to the entire project and argue that it would act as a disincentive to increase capacity. Further, United, ACE NY, and SEIA note that the Proposal does not address projects that increased capacity during the period between January 1, 2022, and September 1, 2023. United, ACE NY and SEIA support DPS Staff's recommendations to require the Joint Utilities to amend their tariffs to specify how the CBC charge is applied to DER systems expanded after September 1, 2023, and to include the calculation of the CBC charge on the utility bill.

The Commission agrees with United, ACE NY, and SEIA's concerns that adopting DPS Staff's Proposal, which would apply the CBC charge to capacity interconnected before the establishment of the CBC charge on January 1, 2022, could disincentivize solar customers from expanding their systems. The Commission has also recognized the importance of keeping the compensation methodology in place at the time developers have made substantial investments in planning their projects.<sup>12</sup> On the other hand, the Commission is cognizant of the concerns raised by the Joint Utilities with bifurcating the CBC charge between the original system kW capacity and the expanded incremental kW capacity. Accordingly, to address these concerns, the Commission finds that DER systems that were interconnected before January 1, 2022 (i.e., the implementation

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<sup>12</sup> Case 15-E-0751, Order Regarding Value Stack Compensation (issued April 18, 2019), p. 34.

date for the CBC charge), including any subsequent incremental expansions to the system occurring after such date, shall be “grandfathered” and not assessed the CBC charge.<sup>13</sup>

However, where a DER system has undergone a complete replacement that became operational on or after January 1, 2022, and has very likely undergone a new Standard Interconnection Requirement (SIR) application, such system shall be treated as a new project and have the CBC charge assessed to the entire DER capacity. This is consistent with the Commission’s requirement in the NEM Successor Order that referred to the imposition of the CBC charge on new on-site solar PV generation. To provide sufficient time for the Joint Utilities to identify any such DER systems that constitute a complete replacement, these tariff provisions shall take effect on September 1, 2024. Therefore, the CBC will be applied to the entire capacity of such projects by this date, if it is not already being applied.

As noted above, the NEM Successor Order did not specifically address how to apply the CBC charge for projects installed before January 1, 2022, yet were expanded subsequently, leading to different applications of CBC charges by the Joint Utilities. NYSEIA and SUNation both concede that applying the CBC charge to the incremental capacity associated with a project expansion would be justified. However, the Commission is taking a more restrictive approach here that will eliminate the application of CBC charges for such incremental capacity on a going forward basis, as of September 1, 2024. The benefit of eliminating such charges should offset any CBC charges that may have been applied by the Joint Utilities thus

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<sup>13</sup> While the NEM Successor Order directed the implementation date for the CBC charge to begin on January 1, 2021, the implementation date was subsequently extended by the Secretary to the Commission to January 1, 2022.

far to the capacity existing prior to January 1, 2022. Moreover, the tariff provisions addressing this matter may only be applied on a prospective basis. Therefore, we deny SUNation's request for customer credits for any CBC charges that were applied to the entire system. Going forward, we find that it is now clear that the original interconnection date is the sole determining factor for the implementation of the CBC charge, whether the system was expanded or not, with the exception of where a system may have been interconnected before January 1, 2022, but was completely replaced on or after such date. Regarding projects interconnected on or after January 1, 2022, the Commission expects, consistent with prior orders, that the CBC will be applied to the entirety of such project, including any subsequent incremental expansions.

The Commission adopts DPS Staff's recommendation that the Joint Utilities be required to include the calculation of the CBC charge on the utility bill. As such, the Joint Utilities have an obligation to adequately explain and demonstrate to its customers how the CBC charge is calculated in a transparent manner. The explanation included on the customer bill should list the system size, corresponding CBC charge per kW and the resulting dollar charge which appears on the customer's utility bill. While the Joint Utilities argue that implementation of this requirement may take time, we direct the Joint Utilities to provide this information on the customer bill within six months of issuance of this Order to avoid customer confusion. Additionally, each member of the Joint Utilities is directed to file a letter with the Secretary to the Commission within 30 days of the completion of adding the CBC calculation to customer utility bills.

Finally, the Commission directs the Joint Utilities to file tariff amendments consistent with the body of this Order,

on not less than thirty days' notice, to become effective on September 1, 2024. As these tariff revisions will be filed in 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. Central Hudson Gas & Electric Corporation; Consolidated Edison Company of New York, Inc.; New York State Electric & Gas Corporation; Niagara Mohawk Power Corporation d/b/a National Grid; Orange and Rockland Utilities, Inc.; and Rochester Gas and Electric Corporation are directed to file tariffs, on not less than thirty days' notice, to become effective September 1, 2024, applying the Customer Benefit Contribution Charge for all Distributed Energy Resource projects that constitute a complete replacement of a prior project or are newly installed on or after January 1, 2022, as discussed in the body of this Order.

2. Central Hudson Gas & Electric Corporation; Consolidated Edison Company of New York, Inc.; New York State Electric & Gas Corporation; Niagara Mohawk Power Corporation d/b/a National Grid; Orange and Rockland Utilities, Inc.; and Rochester Gas and Electric Corporation are directed to file tariffs, on not less than thirty days' notice, to become effective September 1, 2024, providing that the Customer Benefit Contribution Charge shall not apply to Distributed Energy Resource projects interconnected before January 1, 2022, including incremental additions to such projects.

3. Central Hudson Gas & Electric Corporation; Consolidated Edison Company of New York, Inc.; New York State Electric & Gas Corporation; Niagara Mohawk Power Corporation d/b/a National Grid; Orange and Rockland Utilities, Inc.; and

Rochester Gas and Electric Corporation shall incorporate the calculation of, and summary explanation of the Customer Benefit Contribution Charge, on customer's bills within six months of the issuance of this Order.

4. Central Hudson Gas & Electric Corporation; Consolidated Edison Company of New York, Inc.; New York State Electric & 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 letter with the Secretary to the Commission within 30 days of the completion of adding the Customer Benefit Contribution Charge calculation to customer utility bills.

5. 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 Nos. 1 and 2 are waived.

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