

NEW YORK STATE
PUBLIC SERVICE COMMISSION

Petition of Central Hudson Gas & Electric Corporation
For Approval of Its Community Solar Project

Case 15-E-0434

COMMENTS OF INDEPENDENT
POWER PRODUCERS OF NEW YORK, INC.

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On July 1, 2015, Central Hudson Gas & Electric Corporation (“Central Hudson”) filed with the New York State Public Service Commission (“Commission”) a petition for approval of its community solar demonstration project (the “Community Solar Project”) in the above-captioned case.¹ Central Hudson also petitioned the Commission to order the New York State Energy Research and Development Authority (“NYSERDA”) to provide Central Hudson with a grant of approximately \$1.40/Watt to make the solar subscription price to customers comparable to the price customers pay for conventional energy and to approve deferral and cost recovery for the Community Solar Project pursuant to the same terms and conditions approved by the Commission for other demonstration projects’ deferral and cost recovery in its Reforming the Energy Vision (“REV”) policy order in Case 14-M-0101² and its order in Central Hudson’s recent electric and gas rate case.³ Central Hudson stated that Department of Public Service Staff (“Staff”) requested that Central Hudson file the Petition because Central Hudson cannot

¹ Case 15-E-0434, Petition of Central Hudson Gas & Electric Corporation For Approval of Its Community Solar Project (July 1, 2015) (“Petition”).

² Case 14-M-0101, *Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision*, Order Adopting Regulatory Policy Framework and Implementation Plan (Feb. 26, 2015), at 116 (“REV Policy Order”).

³ Cases 14-E-0318 et al., *Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Central Hudson Gas & Electric Corporation for Electric Service*, Order Approving Rate Plan (June 17, 2015), at 27–28, 66–67 (the “Rate Case”).

implement the proposed Community Solar Project until the Commission approves NYSERDA's funding and rules that Central Hudson can own the Community Solar Project.⁴

Central Hudson claims that its Community Solar Project qualifies for utility ownership. Central Hudson argues that its Community Solar Project meets three of the Commission's exceptions to its policy in its REV Policy Order that utilities not be permitted to own distributed energy resources ("DER") because it: "(1) consists of energy storage integrated into distribution system architecture; (2) will enable low and moderate income customers to benefit from DER where markets are not likely to satisfy the need; and (3) is being sponsored for demonstration purposes."⁵

In response to the notice soliciting comments on the Petition that was published in the New York State *Register* on August 12, 2015, Independent Power Producers of New York, Inc. ("IPPNY"), hereby submits its comments in opposition to the Petition. IPPNY is a not-for-profit trade association representing the independent power industry in New York State. Its members include nearly 100 companies involved in the development, operation, and ownership of electric generators, and the marketing and sale of electric power in New York's electricity markets. As a trade association representing wholesale suppliers, one of IPPNY's primary missions is the continued development and enhancement of reliable and efficient competitive electricity markets. Well-functioning competitive electricity markets are essential to meeting the State's needs for electricity at just and reasonable rates. With respect to its instant comments on the Petition, IPPNY's interest lies mainly in ensuring that any demonstration projects that the Commission approves or Staff authorizes to go forward are complementary to, and compatible

⁴ Petition at 1–2.

⁵ *Id.* at 2.

with, the continued functioning of reliable, non-discriminatory, competitive electricity markets in New York.

As discussed below, the Commission should reject Central Hudson's proposed Community Solar Project because it has been superseded by, and is inconsistent with, the community distributed generation ("DG") program (the "Community DG Program") that the Commission required the State's electric distribution companies ("EDCs") to implement in its July 17, 2015 order.⁶ While Central Hudson proposes to own its Community Solar Project and not rely on net metering to finance its costs, the Community DG Program requires community net metering and ownership of community DG by entities other than EDCs.

Assuming, *arguendo*, that the Commission would consider allowing EDCs to pursue a community solar program that is inconsistent with the Community DG Program, the Commission should still reject Central Hudson's proposed Community Solar Project because it does not meet the Commission's criteria for a demonstration project in the Commission's REV Policy Order. Central Hudson proposed to own the Community Solar Project and to have its captive ratepayers guarantee recovery of the Project's costs. The Community Solar Project fails to meet the Commission's core objectives that private capital, not captive ratepayer dollars, be used to develop demonstration projects and that regulated utilities only own DER if private investors are unwilling to address the need. If the Commission authorizes Central Hudson to own the Community Solar Project, it would constrain the innovation that results from competition and hamper the private investment that the Commission seeks to encourage in its REV proceeding.

⁶ Case 15-E-0082, *Proceeding on Motion of the Commission as to the Policies, Requirements and Conditions for Implementing a Community Net Metering Program*, Order Establishing a Community Distributed Generation Program and Making Other Findings (July 17, 2015) ("July 17 Order").

I. BACKGROUND

Central Hudson first proposed its Community Solar Project as part of its filing with the Commission on July 25, 2014, in the Rate Case, to amend its gas and electric delivery rates. Central Hudson proposed four demonstration projects, including the Community Solar Project, which it contended are consistent with the Commission's policy goals expressed in the REV proceeding. According to the Rate Case's Joint Proposal, a REV Working Group was formed on January 7, 2015, to engage in a collaborative process to consider and develop the Company's four proposed REV projects and any additional REV demonstration projects identified by the working group.⁷ In the Joint Proposal, Central Hudson agreed to file a report no later than May 1, 2015, detailing the REV demonstration projects that had been developed by the REV Working Group for Commission consideration at its June 2015 session. The Joint Proposal provided that:

The report will provide details on the demonstration projects, including project descriptions, milestones, costs and how those costs would be recovered. The report will identify how the demonstration projects meet the criteria summarized by the Commission in its December 12, 2014 Memorandum and Resolution on Demonstration Projects in Case 14-M-0101 or criteria otherwise adopted by the Commission in Case 14-M-0101.⁸

The Joint Proposal also provided that parties are free to support or object to any demonstration projects proposed in the report.

According to the "Report Regarding the REV Collaborative and Developing Demonstration Projects" (the "Report") that Central Hudson filed with the Commission on May 1, 2015, Central Hudson proposed to own the Community Solar Project, which will be located in Ulster County in the Town of Saugerties, and it already owns the land upon which it will be sited. Central Hudson claimed that there is currently no market for community solar and that its

⁷ Cases 14-E-0318 et al., *supra*, Joint Proposal (Apr. 22, 2015), at 44 ("Joint Proposal").

⁸ *Id.*

Community Solar Project will “animate the market and increase the penetration of renewable solar energy” by providing solar energy to customers that may not otherwise be able to install their own photovoltaic (“PV”) facilities.⁹

Customers may voluntarily participate in the Community Solar Project by purchasing the financial equivalent of a minimum of one 100 kWh energy tranche each month. Central Hudson proposed to charge customers a fixed price per kWh for each financial equivalent purchased and the rate will not change for the period of the purchase agreement. The fixed price will include the annual cost of service on the asset, which includes: project installation, project material, labor, property taxes, insurance, operation and maintenance, interconnection, Central Hudson’s cost of capital, environmental and permitting, site security, and IT programming.

Central Hudson proposed to offer customers a 25 year agreement, but customers will only be required to pay an exit fee if they exit the contract within the first two years. Central Hudson is seeking an allocation of the Renewable Portfolio Standard (“RPS”) funds from NYSERDA and will claim the Federal Investment Tax Credit (“ITC”) to the extent that the Community Solar Project is eligible. Central Hudson stated it will not proceed with construction of the Community Solar Project until it is 70% subscribed and unless it receives a one-time subsidy from NYSERDA or from another entity. However, if the Community Solar Project is not fully subscribed but has more than a 70% subscription, the Report states that “Central Hudson’s non-participating rate customers will have to pay for some of the costs until the Project is fully subscribed, although the amount of risk assumed by customers is immaterial.”¹⁰

⁹ Petition at 7-8.

¹⁰ Report at 16.

II. THE COMMUNITY SOLAR PROJECT IS INCONSISTENT WITH THE COMMUNITY DG PROGRAM.

In its July 17 Order, the Commission adopted a framework for the implementation of community DG. After carefully considering numerous comments on a comprehensive straw proposal, the Commission decided to center its Community DG Program on a net metering paradigm as authorized under Sections 66-j and §66-l of the New York State Public Service Law (“PSL”) and to establish the relationship among the parties involved in a community DG project. Importantly, the Commission did not provide the EDCs with an ownership role in community DG. The Commission ruled that

a group of customers would join together into a membership that would associate as, or contract with, some form of business, not-for-profit or governmental entity. That entity would become the project sponsor responsible for building a Community DG generation facility, interconnecting it to the utility grid, and then owning or operating it in conformance with the net metering requirements of PSL §66-j and §66-l.¹¹

The Commission determined that the sponsor would manage the project’s relationship with the EDC to allow the EDC to carry out its limited role of distributing net metering credits from the community DG facility pursuant to the sponsor’s instructions. The Commission clearly intended to separate the project sponsor’s role from the EDC’s role. There is nothing in the Commission’s July 17 Order that suggests that EDCs could act as the sponsor and own a community DG project.

Central Hudson’s proposal to develop and own its Community Solar Project without the benefit of net metering is contrary to the Commission’s July 17 Order. The Commission was clear that it would not entertain other community DG models. It stated:

¹¹ July 17 Order at 4-5. The Commission stated that the “sponsor may be any single entity, including the generation facility developer, an energy service company (ESCO), a municipal entity such as a town or village, a business or not-for-profit corporation, a limited liability company, a partnership, or other form of business or civic association.” *Id.* at 8.

Parties present a wide variety of other proposals concerning Community DG programs. These proposals have been reviewed, and it has been determined that they are either inconsistent with the net metering paradigm adopted for Community DG, will not contribute to the success of a Community DG program, are unnecessary, or are otherwise inappropriate. As a result, *any proposal inconsistent with the Community DG program adopted above is deemed rejected.*¹²

The Community DG Program also supersedes the primary purpose of Central Hudson's Community Solar Project to provide solar energy to customers that could not otherwise obtain solar energy from their own installed PV panels. The Commission stated in its July 17 Order that "the purpose of Community DG is to open opportunities for participation in solar and other forms of clean distributed generation to utility customers that would not otherwise be able to access that generation directly."¹³

Thus, the Commission should reject Central Hudson's proposed Community Solar Project.

III. THE COMMUNITY SOLAR PROJECT DOES NOT SATISFY THE COMMISSION'S PRIMARY GOALS FOR DEMONSTRATION PROJECTS.

In its comments submitted in the REV proceeding, IPPNY advocated that the Commission prohibit utilities from owning DER because it would allow them to exercise vertical market power to the detriment of the competitive wholesale electricity market and it would chill development by competitive, private investors who are eager to invest their capital in New York. The Commission largely agreed with IPPNY's concerns regarding the risks that utility ownership imposes on private investment and adopted rules restricting utility ownership of DER.

In its REV Policy Order, the Commission stated that it was "persuaded that unrestricted utility participation in DER markets presents a risk of undermining markets more than a potential

¹² July 17 Order at 31 (emphasis added).

¹³ July 17 Order at 3.

for accelerating market growth.”¹⁴ The Commission found that it did not need to depend on utility ownership to encourage the growth of DER deployment because private investors have shown a strong interest in developing DER. It stated that a basic tenet of REV is that DER should be financed by private, market-based capital rather than captive ratepayer funding, and that utility ownership of DER conflicts with this goal. The Commission agreed with IPPNY and other parties that, due to their incumbent advantages, utility ownership of DER would chill the competitive deployment of DER by private investors. The Commission stated, “[m]arkets will thrive best where there is both the perception and the reality of a level playing field, and that is best accomplished by restricting the ability of utilities to participate.”¹⁵ Therefore, the Commission ruled that utility ownership of DER will be allowed only under the following circumstances:

- procurement of DER has been solicited to meet a system need, and a utility has demonstrated that competitive alternatives proposed by nonutility parties are clearly inadequate or more costly than a traditional utility infrastructure alternative;
- a project consists of energy storage integrated into distribution system architecture;
- a project will enable low or moderate income residential customers to benefit from DER where markets are not likely to satisfy the need; or
- a project is being sponsored for demonstration purposes.¹⁶

Although it allowed utility ownership of DER for demonstration purposes, the Commission adopted criteria that utilities must meet before they are authorized to develop and own demonstration projects. The Commission established the criteria in its December 12, 2014

¹⁴ REV Policy Order at 67.

¹⁵ *Id.*

¹⁶ *Id.* at 70.

Memorandum and Resolution on Demonstration Projects in Case 14-M-0101, which it adopted in, and attached to, its REV Policy Order.¹⁷ Central Hudson contended that it meets these criteria, but it is clear the Central Hudson's proposed Community Solar Project violates the Commission's core principle that demonstration projects be developed with private investor capital rather than on the backs of captive ratepayers.

Principle 1 provides that "REV demonstrations should include partnership between utility and third party service providers. These partnerships may be unique to each demonstration depending on the situation. Utilities should endeavor to support demonstrations where third parties use their own capital."¹⁸ Central Hudson claimed that its Community Solar Project is based on a new business model because it represents a new business opportunity for competitive third-party service providers. However, this is not the type of business model that the Commission intended for demonstration projects to test. Central Hudson proposed to merely subcontract the construction, operation, and maintenance of the Community Solar Project to third parties and to subsidize its costs with RPS funds from NYSERDA.¹⁹ It does not propose that third parties use their own capital or take any risk. Central Hudson's proposal is hardly different than the historical practice of utilities to subcontract to private companies the construction, operation, and maintenance of various parts of its system. The Commission seeks to encourage innovative approaches offered by private investors to recover their capital costs in demonstration

¹⁷ *Id.* at 115. The Memorandum and Resolution is attached to the REV Policy Order as Appendix D.

¹⁸ *Id.* at Appendix D, Appendix A, p.1.

¹⁹ The Commission has already considered and rejected a proposal to allow utilities to receive RPS funding to fund renewable facilities. During the 2009 RPS review, the Commission rejected the establishment of a new "Utility-Sited Tier" under the RPS to promote small, utility solar photovoltaic facilities. Case 03-E-0188, Proceeding on Motion of the Commission Regarding a Retail Renewable Portfolio Standard, Order Authorizing Customer-Sited Tier Program Through 2015 and Resolving Geographic Balancing and Other Issues Pertaining to the RPS Program (Apr. 2, 2010), at 34–35.

projects. Central Hudson's Community Solar Project would not provide any insight on this core principle.

Principle 2 provides that "[t]he utility should identify questions it hopes to answer or problems or situations on the grid and the market should respond with solutions. Hence, third party participation through a traditional RFP/RFI method where the utility has pre-diagnosed the solution(s) does not meet this requirement. Data sharing will be essential to enable market participants to propose solutions."²⁰ Contrary to this principle, Central Hudson "pre-diagnosed" its proposed Community Solar Project and merely solicited third-party participation through a traditional request for proposals and information. Its Community Solar Project was not the result of any market response to an identified problem on its system.

Principle 4 provides that "[t]he market for grid services should be competitive. The regulated utility should only own distributed energy resources if market participants are unwilling to address the need and the utility is acting as the service provider of last resort (in this instance, 'provider of last resort' and 'needed' means that no one in the market is providing the solution and the distributed solution is less costly than alternatives for the problem)."²¹ Central Hudson has not demonstrated that it is acting as the service provider of last resort. Indeed, its Report identified a community solar demonstration project proposed by SolarCity, whose "rates will be determined by the market and the business risk of the undertaking will be borne by private enterprise."²²

In its testimony filed on Central Hudson's proposed REV demonstration projects, Staff testified:

²⁰ *Id.*

²¹ *Id.*

²² Report at 17.

We believe that utility ownership of the proposed Community Solar program should be considered only after the marketplace has had an opportunity to offer a similar community solar program, which, in our opinion, has not been adequately tested. As such, we propose that Central Hudson partner with, or seek out, a third party that would own, operate and maintain a community solar facility at no risk to the Company's ratepayers.²³

As a private investor has proposed a community solar project in Central Hudson's Rate Case and many more private investors are likely to propose community DG projects in response to the Community DG Program, there is no reason, and it would violate the Commission's objectives, for Central Hudson to go forward with its competing proposal. Indeed, to allow Central Hudson to go forward with its Community Solar Project would send the wrong signal to private investors that the nascent DER market in New York will not be a level playing field. No private investor can compete with utility projects whose costs are guaranteed by captive ratepayers. Competition and capital risk drives developers to find innovative solutions to minimize costs. Allowing Central Hudson to own its proposed Community Solar Project would constrain this innovation and chill the private investment that the Commission seeks to encourage.

Central Hudson's claim that its Community Solar Project qualifies for utility ownership because it will serve low-income customers must also be rejected. It proposed that it offer only five percent of the output of the Community Solar Project to low-income customers at a discounted rate. Central Hudson argues that its set aside of five percent of the Community Solar Project to low-income customers qualifies it to own the 95% of the Community Solar Project that will not be serving low-income customers. If the Commission approves Central Hudson's ownership of the Community Solar Project on this ground, it will open a loophole that other utilities will seek to exploit by offering to provide a *de minimis* amount of a project's output to

²³ Case 14-E-0318 *et al.*, *supra*, Prepared Testimony of the Reforming the Energy Vision Panel: Debbie S. Evans *et al.*, (Nov. 2014), at 12.

low-income customers simply to qualify for this exception. Further, the Commission's Community DG Program was designed to encourage low-income customer participation by providing that "Community DG projects will be deemed innovative if 20% of the members of a project are low-income customers."²⁴ Thus, Central Hudson's Community Solar Project is not serving a need that will remain unmet.

Finally, the Commission should reject Central Hudson's argument that its Community Solar Project qualifies for utility ownership because it consists of energy storage integrated into its distribution system architecture. Central Hudson stated that it plans to incorporate battery storage and "smart" inverters to further enhance the value of the project in the energy market and to support the distribution system.²⁵ While the battery storage itself might arguably qualify for utility ownership under the Commission's exceptions to its policy prohibiting utility ownership of DER, Central Hudson has provided no justification why this exception should be extended to its proposed PV solar generation facility, which likely comprises the bulk of its proposed investment in its Community Solar Project. The Commission could not have intended that utilities be allowed to own PV projects simply because some battery storage was included in the project. This would allow the exception to swallow the rule.

²⁴ July 17 Order at 22.

²⁵ Petition at 11.

IV. CONCLUSION

Based on the foregoing, the Commission should reject Central Hudson's proposal to own its proposed Community Solar Project.

Respectfully submitted,

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