STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of Albany on September 15, 2022

COMMISSIONERS PRESENT:

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

CASE 19-E-0735 - Petition of New York State Energy Research and Development Authority Requesting Additional NY-Sun Program Funding and Extension of Program Through 2025.

ORDER MODIFYING EXPANDED SOLAR FOR ALL PROGRAM

(Issued and Effective September 15, 2022)

BY THE COMMISSION:

INTRODUCTION

On February 22, 2022, the Coalition for Community Solar Access (CCSA) filed a Request for Rehearing (the Petition) of the Public Service Commission's (Commission) Expanded Solar For All (E-SFA) Order.[1] CCSA requests that the Commission grant rehearing or reconsideration and determine that Niagara Mohawk Power Corporation d/b/a National Grid (National Grid) Energy Affordability Program (EAP) customers that participate in the E-SFA program administered by National Grid and the New York State

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[1] Case 19-E-0735, NY-Sun Program Funding and Extension of Program Through 2025, Order Approving Expanded Solar for All Program with Modifications (issued January 20, 2022) (E-SFA Order).

Energy Research and Development Authority (NYSERDA) be permitted to simultaneously participate in a Community Distributed Generation (CDG) project (including where the customer is billed through net crediting), or to simultaneously enroll in a Remote Crediting or Remote Net Metered (RNM) project. The Petition claims that the E-SFA program serves different goals than distributed solar programs like CDG, Remote Crediting, and RNM, in that the latter three provide opportunities for participation in solar to customers that lack the ability to directly access that generation (e.g., through rooftop solar), while the E-SFA program is more centered on providing rate assistance to disadvantaged customers. The Petition also argues that dual participation would not run afoul of the Commission's existing rule that a customer cannot be subscribed to multiple CDG projects, because E-SFA program participants are not actually assigned to a particular distributed solar project.[2] Conversely, CCSA asserts that allowing dual participation would avoid competition between distributed solar and the E-SFA program, and reduce the risk of the E-SFA program "crowding out" private CDG developers in National Grid's service territory.

As discussed in the body of this Order, the Commission hereby modifies the E-SFA program such that EAP customers may simultaneously participate in the E-SFA program and in one other distributed solar program like CDG, Remote Crediting, or RNM.

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[2] Case 15-E-0082, Community Net Metering, Order Establishing a Community Distributed Generation Program and Making Other Findings (issued July 17, 2015) (CDG Implementation Order). In a recent order, the Commission, among other things, reaffirmed its stance that a customer may not participate in multiple CDG projects as satellites, or to simultaneously participate in both a CDG project and another net metering project, such as RNM or Remote Crediting. See Case 15-E-0082, supra, Order Clarifying Community Distributed Generation Membership Requirements (issued February 12, 2021) (CDG Clarification Order).

BACKGROUND

On January 20, 2022, the Commission issued the E-SFA Order authorizing NYSERDA and National Grid to implement the E-SFA program in National Grid's service territory. In the E-SFA program framework, NYSERDA solicits eligible CDG projects to participate, and National Grid automatically enrolls its EAP customers into the E-SFA program on an opt-out basis, subject to certain exceptions (e.g., customers already receiving bill credits through an existing CDG subscription would not be automatically enrolled). Participating CDG projects inject their generation into National Grid's system and are compensated by National Grid through the Value of Distributed Resources (VDER) Value Stack, similar to the existing compensation methodology for CDG projects. The Value Stack credits are then split into three portions – a Customer Share to be used for participating customers' benefit, a Utility Administrative Fee for National Grid, and the remainder paid directly to the project owner. The Customer Share of all participating CDG projects are then aggregated and distributed evenly among all E-SFA customers as a fixed monthly credit on electric bills.

In the E-SFA Order, the Commission stated that "[t]o maintain consistency with the existing CDG framework, customers that participate in the E-SFA program will not be permitted to simultaneously participate in another CDG project, or to simultaneously enroll in a Remote Crediting or Remote Net Metered project."[3] The Commission previously stated that members of CDG projects may not locate net metered generation facilities on-site, or obtain net metered credits other than from the one project in which they are members.[4] The Commission found this

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[3] E-SFA Order, pp. 30-31.

[4] CDG Implementation Order, p. 17.

restriction to be appropriate based on the purpose of CDG to make net metering available to customers that cannot otherwise participate in other clean energy opportunities like rooftop solar, and on the concern that allowing customers to receive net metering credits from multiple sources would be unduly burdensome on the utility billing systems.[5] The Commission later reaffirmed the restriction against participation in multiple CDG projects, noting that allowing a customer to subscribe to multiple CDG projects would undermine the CDG program by allowing larger customers to participate in multiple CDG projects as satellites, thereby reducing subscriptions available to smaller customers.[6] The Commission similarly reaffirmed the restriction on members in a CDG project participating in other net metered projects.[7]

THE PETITION

CCSA asserts that it supports the Commission's intent through the E-SFA Order to increase enrollment of low-income customers in distributed solar, and improve the equitable distribution of solar benefits to disadvantaged communities, but expresses concern that the E-SFA program would unnecessarily interfere with the current CDG program, diminish efforts to enroll members of disadvantaged communities, undermine the principle of customer choice, and erode investor confidence in New York's clean energy programs. CCSA states that, since National Grid and NYSERDA first filed its E-SFA Petition, NYSERDA launched the Inclusive Community Solar Adder (ICSA) and utilities have made progress implementing consolidated billing for various net energy metering projects that receive Value

[5] Id.

[6] CDG Clarification Order, p. 16.

[7] CDG Clarification Order, p. 17.

Stack compensation. As such, CCSA claims that circumstances have changed regarding the potentially complementary nature of the CDG and E-SFA programs and argues that the Commission should grant rehearing or reconsideration of the E-SFA Order's directive that customers participating in the E-SFA program cannot simultaneously participate in another CDG project, or cannot simultaneously enroll in a Remote Crediting or RNM project.

CCSA argues that the CDG and E-SFA programs serve different goals. CCSA asserts that the CDG program is meant to open opportunities for participation in solar and other forms of clean distributed generation to utility customers that otherwise would not be able to access that generation directly because they lack control over sites that can be configured into a location for a clean generation facility. On the other hand, CCSA asserts, the E—SFA program, while nominally tied to the CDG program, is more centered on providing rate assistance to disadvantaged customers. CCSA states that this difference is reflected in the fundamentally different experiences of the opt-in CDG subscriber and the E-SFA participant (i.e., the former actively subscribes to receive credits from a specific project in their community, while the latter is automatically enrolled and passively receives bill credits from a pool).

CCSA asserts that allowing simultaneous participation in the E-SFA program and in a CDG, RNM, or Remote Crediting project would not be "double counting" for the purpose of the Commission's existing policy against a customer subscribing to multiple such projects, because E-SFA is not a program that actually assigns customers to a particular distributed solar project. CCSA notes that E-SFA bill credits are listed on a separate line item on a customer's utility bill, and are in addition to any other bill credits for which the customer may qualify.

CCSA further argues that permitting dual participation would allow EAP customers to receive a flat bill credit, of up to $5.00, from the first phase of the E-SFA program, in addition to their monthly savings from a standard CDG subscription. CCSA states that low-income customers would therefore receive the benefits of both programs, and the equity goals of the Climate Leadership and Community Protection Act (CLCPA) would be further advanced. In addition, CCSA states that if dual participation is allowed, CDG sponsors would not be discouraged from enrolling additional EAP customers in National Grid-located projects, and private investor confidence would not be undermined. Similarly, permitting dual participation would address the concern that National Grid, through the E-SFA program, would be competing with and potentially crowding out private CDG market participants.

In the alternative, if dual participation is not allowed, CCSA recommends that the Commission take steps to ensure that existing customer contracts are not disturbed by the automatic enrollment of EAP customers into E-SFA. CCSA argues that customers should be considered "subscribed" or "enrolled" in a CDG project upon execution of a subscription, and those customers should not have their choice unilaterally overridden by being automatically enrolled on the E-SFA program. CCSA describes several scenarios where a customer with a CDG subscription should not be automatically enrolled in E-SFA. First, customers who have signed a subscription agreement but have yet to be assigned to a CDG project (e.g., because the project is not yet built) should not be automatically enrolled in the E-SFA program. Second, EAP customers subscribed to operating CDG projects and receiving bill credits should not be automatically enrolled in the E-SFA program. CCSA specifically points to projects that have enrolled in NYSERDA's ICSA program. CCSA notes that ICSA projects could suffer a significant penalty if their customers switch to the E-SFA program. Because the ICSA is a $/Watt upfront payment based on the actual capacity allocated to ICSA-eligible subscribers at commercial operation, such projects could therefore lose those incentives as a result of customer switching. Finally, CCSA notes that, under current ICSA rules, a project's capacity that is allocated to ICSA-eligible customers cannot be reallocated to non-ICSA customers, or the project risks losing all of its ICSA incentives.

NOTICE OF PROPOSED RULE MAKING

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rule Making was published in the State Register on March 23, 2022 [SAPA No. 19-E-0735SP4]. The time for submission of comments pursuant to the Notice expired on May 23, 2022. Comments were received from National Grid, Nexamp Inc. (Nexamp), the New York Solar Energy Industries Association (NYSEIA), and Arcadia Power, Inc. (Arcadia). These comments are summarized and addressed below.

COMMENTS

National Grid

National Grid does not oppose dual participation in the E-SFA program and in a traditional CDG, Remote Crediting, or RNM project. While it adopted the no-dual-participation principle for the E-SFA program in the interest of aligning with Commission precedent and established CDG rules, National Grid acknowledges that the E-SFA program differs from traditional CDG. National Grid also states that preventing EAP customers from participating in both could affect the efforts of some project developers interested in enrolling EAP customers, and could create confusion or dissatisfaction on the part of EAP customers that participate in or intend to participate in a traditional CDG project. Conversely, it notes that directing more benefits associated with the clean energy economy to EAP customers would align with the Commission's long-time policy objectives of assisting low-income customers, and with the CLCPA.

National Grid asserts that dual participation could be implemented without significant administrative burden to the utility, and would not delay the ultimate implementation of the E-SFA program. In the alternative, if the Commission does not authorize dual participation, National Grid agrees that an active CDG satellite that is receiving CDG credits would not be enrolled in the E-SFA program, and an E-SFA customer that National Grid subsequently learns has chosen to participate as a direct CDG satellite (i.e., because the utility received a CDG enrollment request for that customer) would be unenrolled from the E-SFA program.

Nexamp

Nexamp supports dual participation. Nexamp asserts that allowing dual participation will enable low-income residents to maximize the benefits they receive under state-supported programs, consistent with goals of the CLCPA. Dual participation would ensure that participating customers are not precluded from additional potential savings offered by distributed generation programs.

Nexamp also states that the E-SFA program does not assign customers to a unique distributed solar project, and allowing dual participation would therefore not result in "double counting" since customers would not be subscribing to more than one CDG project. Finally, Nexamp states that when CDG program incentives are working in harmony with the utility-based E-SFA effort, it reinforces positive market signals to developers and finance communities.

NYSEIA

NYSEIA states that allowing dual participation increases energy equity, customer choice, and the potential savings directed to eligible low-income customers and disadvantaged communities. NYSEIA states that National Grid customers enrolled in rate assistance programs should not be barred from potentially receiving increased benefits from CDG due to their auto-enrollment in the E-SFA program.

According to NYSEIA, allowing dual participation would also prevent undermining developer confidence in the recently-expanded NY-Sun program. If the Commission grants the requested relief, NYSEIA urges adoption of a clear implementation schedule and seeks clarity for customers and CDG providers about how the two offerings will be implemented.

Arcadia

Arcadia also supports dual participation. Arcadia states that not allowing dual participation creates a scenario where the E-SFA program comes at the expense of other benefits and opportunities like potentially greater savings via an opt-in CDG product. Like Nexamp, Arcadia notes that the E-SFA program does not assign customers to a particular distributed solar project, and dual participation therefore would not result in a customer subscribing to more than one CDG project. Arcadia also asserts that dual participation would minimize disruption to the existing CDG program, and would support ongoing market-based solutions to reach low-income customers. Arcadia notes that prohibiting dual participation could unintentionally undermine the ICSA program as developers steer clear of attempting to enroll EAP customers given the reasonable chance that they would be enrolled by the utility. Arcadia also points to other states that allow dual participation.

Arcadia argues that the E-SFA program should not launch until participating utility billing systems and processes are capable of consistently, accurately, and timely billing CDG and E-SFA customers. Finally, if the Commission does not permit dual participation, Arcadia recommends that the E-SFA program not commence until the rules applicable to opt-out community choice aggregation programs have been established, and there has been sufficient time to review and address any potential negative impacts.

LEGAL AUTHORITY

The Commission's authority to grant or refuse an interested person's request for rehearing of an order is established by PSL §22 and governed by regulations implementing that statute that are contained in 16 NYCRR §3.7. Rehearing may only be sought on the grounds that the Commission committed an error of law or fact or that new circumstances warrant a different determination.[8] A petition for rehearing must separately identify and specifically explain and support each alleged error or new circumstance said to warrant rehearing.

DISCUSSION

While the Petition is characterized as one for rehearing, the Commission finds that the E-SFA Order did not contain an error of law or fact, or that new circumstances

[8] 16 NYCRR §3.7(b).

warrant a different determination.[9] However, CCSA also requests that the Commission "reconsider its determination that customers that participate in the E-SFA program will not be permitted to simultaneously participate in another CDG project, or to simultaneously enroll in a Remote Crediting or [RNM] project."[10] As such, the Commission will consider the arguments raised as a request for reconsideration.

Upon reconsideration of the E-SFA Order, the Commission is persuaded by the arguments raised by CCSA and the commenting parties that customers should be allowed to simultaneously participate in the E-SFA program and a CDG project. In the E-SFA Order, the Commission stated that the restriction against dual participation was being implemented to "maintain consistency with the existing CDG framework," which limits customers from acting as a satellite to more than one CDG project. In authorizing the CDG program, the Commission allowed utilities to establish the one CDG subscription limit, in part, to enable a greater number of customers to participate in Distributed Energy Resources, and to avoid situations where large customers subscribe to multiple CDG projects and leave a smaller amount of solar capacity to be allocated to smaller customers.[11] However, as noted by CCSA and other commenters, there are enough distinct differences between the E-SFA program and programs like CDG, Remote Crediting, and RNM such that the

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[9] While CCSA asserts that the availability of the ICSA and the recent adoption of net crediting constitutes new circumstances warranting rehearing, the Commission notes that the ICSA program was launched by NYSERDA, and net crediting was authorized, prior to the issuance of the E-SFA Order, and therefore these are not "new circumstances" under 16 NYCRR §3.7.

[10] Petition, pp. 1-2 (internal quotations omitted).

[11] See CDG Clarification Order, p. 16.

justifications for the one subscription limit are inapplicable to E-SFA.

First, as the Petition correctly identifies, the E-SFA program pools credits from multiple CDG projects across National Grid's service territory and distributes them evenly to all E-SFA participants, but the E-SFA participants themselves are not actually subscribed to any single CDG project. Thus, while the E-SFA program nominally utilizes the CDG framework to generate bill credits for participants, those customers are not actually satellites to specific CDG projects. It follows that allowing dual participation in E-SFA and a CDG project would not violate the one subscription rule, since the customer would still only be considered a satellite to the traditional CDG project. The Commission also notes that the risk noted above (i.e., that large customers may consume a substantial portion of available CDG capacity, to the detriment of other customers) is not present with the E-SFA program because large customers (and even non-EAP residential customers) are not eligible to participate in the E-SFA program.

Beyond the programmatic differences between the E-SFA and CDG programs, the Commission is also cognizant of the concern raised by CCSA and various commenters that disallowing dual participation would effectively mean that the E-SFA program "competes" with the marketplace because low-income customers are required to either choose to participate in the E-SFA program or to enroll in a traditional CDG project. While the Commission authorized the E-SFA program as a means to address the historical gap in opportunities for low-income customers to participate in community solar, other statewide efforts are currently in place to increase low-income customer participation in, and benefits from, community solar, such as net crediting, and NYSERDA's ICSA program.[12] The Commission is particularly persuaded by the argument that prohibiting dual participation places the E-SFA program in direct competition with ICSA projects for the same customers, and could result in ICSA projects losing all or some of their upfront incentives if their low-income customers choose to leave the project and instead enroll in the E-SFA program. In some instances, the project may not be economically viable without receiving ICSA incentives, and the potential loss of those incentives could discourage CDG projects from participating in the ICSA program and actively soliciting low-income customers to participate in CDG. Conversely, allowing dual participation will avoid frustrating the purpose of the ICSA program, and will encourage developers to continue to solicit low-income customer participation in their projects without the fear of economic consequences if those subscribers decided to instead enroll in the E-SFA program.

The E-SFA Order expressly states, and the Commission reiterates, that customer choice is a key feature of the community solar market in New York.[13] Customers may subscribe to a CDG project for a myriad of reasons, including for monetary benefits (i.e., reduced utility bills), and to support local projects. While the E-SFA program was originally designed so that an E-SFA customer is free to leave the program at any time, that customer was required to affirmatively unenroll from the E-SFA program to participate in a traditional CDG project. This creates a potential situation where EAP customers are unable to receive potentially higher benefits from a CDG project unless

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[12] See Case 19-M-0463, Consolidated Billing for Distributed Energy Resources, Order Regarding Consolidated Billing for Community Distributed Generation (issued December 21, 2019).

[13] E-SFA Order, p. 30.

and until they take those additional steps to unenroll themselves from the E-SFA program, which would result in lost savings to the customer. Granting the relief requested in the Petition would help avoid such a scenario, and would help maximize the benefits available from the E-SFA and CDG programs, consistent with the State's policy to increase the benefits of clean energy programs accruing to low-income customers and disadvantaged communities.[14]

Allowing dual participation will also help avoid the situation described in the Petition, where a customer has executed a contract to participate in a CDG project that has not been constructed yet and National Grid has no visibility into that transaction until such time that the project is operational and an allocation request has been submitted to the utility. In other words, allowing dual participation avoids the risk of customer confusion when a customer is automatically enrolled in the E-SFA program and then unenrolled once the CDG project comes online. Instead, if dual participation is allowed, that customer would be able to receive the benefits of both programs, without risking the customer's choice being frustrated through automatic enrollment in the E-SFA program.

Moreover, the Commission is assured that modifying the E-SFA program to allow for dual participation will not cause undue delay in the E-SFA program's roll-out, or a delay in program benefits accruing to participants. National Grid expressly stated in its comments that dual participation can be implemented without significant administrative burden to the utility and would not delay the ultimate implementation of the E-SFA program.

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[14] E-SFA customers will still be allowed to unenroll from the E-SFA program if they so choose.

For all of the foregoing reasons, the Commission, upon reconsideration, modifies the E-SFA program such that customers automatically enrolled in the E-SFA program may simultaneously subscribe to a CDG project. For those same reasons, customers shall be permitted to simultaneously enroll in the E-SFA program and a Remote Crediting project or an RNM project.

Notwithstanding the foregoing, the Commission's existing policy prohibiting a customer from simultaneously subscribing to multiple CDG projects, or to simultaneously enroll in a CDG project and a Remote Crediting or RNM project, shall remain in place. As noted above, the purpose of this rule was to enable a greater number of customers to participate in community solar, and to avoid situations where a small number of customers occupy a large proportion of available community solar capacity, to the detriment of other customers. Thus, a customer shall be permitted to simultaneously participate in the E-SFA program and in a CDG, Remote Crediting, or RNM project, but shall not be permitted to act as a satellite for multiple CDG projects, or to simultaneously participate in CDG and Remote Crediting or RNM.

CONCLUSION

Upon reconsideration, the Commission hereby modifies the E-SFA program to allow customers participating in the E-SFA program to simultaneously participate in a CDG project, or to simultaneously enroll in a Remote Crediting or RNM project.

National Grid is directed to file tariff amendments consistent with this Order, on not less than five days' notice, to become effective on October 1, 2022, on a temporary basis. As these tariff revisions will be filed in compliance with this Order, the newspaper publication requirements of Public Service Law Section 66(12)(b) and 16 NYCRR §720-8.1 shall be waived.

The Commission orders:

1. The Expanded Solar For All program authorized in the Commission's January 20, 2022 Order Approving Expanded Solar for All Program with Modifications, is modified as discussed in the body of this Order.

2. The New York State Energy Research and Development Authority and Niagara Mohawk Power Corporation d/b/a National Grid shall, within 30 days of the effective date of this order, modify their Expanded Solar For All Implementation Plan to implement the modifications authorized in this Order.

3. Niagara Mohawk Power Corporation d/b/a National Grid is directed to file tariff revisions modifying P.S.C. No. 220 – Electricity, to incorporate revisions consistent with this Order, on not less than five days' notice, to become effective on a temporary basis on October 1, 2022. The revisions are to remain in effect on a temporary basis until made permanent by the Commission.

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

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. This proceeding is continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary