

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on June 11, 2020

COMMISSIONERS PRESENT:

John B. Rhodes, Chair
Diane X. Burman, dissenting
James S. Alesi
Tracey A. Edwards
John B. Howard

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

ORDER GRANTING RECONSIDERATION REGARDING COMMUNITY
DISTRIBUTED GENERATION COMPENSATION

(Issued and Effective June 12, 2020)

BY THE COMMISSION:

INTRODUCTION

On April 18, 2019, the Public Service Commission (Commission) issued the VDER Compensation Order.¹ The VDER Compensation Order modified the calculation and compensation methodology of a number of elements of the Value Stack compensation mechanism for distributed generation, which was originally established in the VDER Transition Order.² The VDER Compensation Order rejected a proposal that non-mass-market participants in Community Distributed Generation (CDG) projects in Tranches 1, 2, 3, and 4 in all utility service territories

¹ Case 15-E-0751, Order Regarding Value Stack Compensation (issued April 18, 2019) (VDER Compensation Order).

² Case 15-E-0751, Order on Net Energy Metering Transition, Phase One of Value of Distributed Energy Resources, and Related Matters (issued March 9, 2017) (VDER Transition Order).

receive a \$0.01/kWh Community Credit (the Proposed Community Credit).

On May 21, 2019, the Coalition for Community Solar Access (CCSA) and the New York Solar Energy Industries Association (NYSEIA) (collectively, the Petitioners) filed a Petition for Rehearing and/or Reconsideration (the Petition). The Petition requests that the Commission grant rehearing or reconsideration of the rejection of the Proposed Community Credit in the VDER Compensation Order and instead direct implementation of the Proposed Community Credit. The Petition argues that the Commission committed an error of fact in finding that the Proposed Community Credit creates a significant risk of increasing net revenue impacts and that the rejection of the Proposed Community Credit results in a barrier to CDG project development meriting reconsideration.

This Order grants reconsideration and directs implementation of the Proposed Community Credit because the Petition and supportive comments provide sufficient information demonstrating that the Proposed Community Credit will not create a significant risk of increasing net revenue impacts. This Community Credit will be part of the compensation for large customers of each eligible CDG project starting with the first billing cycle for that project for which the entire billing period falls after July 31, 2020.

BACKGROUND

The VDER Transition Order directed the transition of compensation for eligible Distributed Energy Resources (DERs) from Net Energy Metering (NEM) to the Value Stack for various rate classes and project types. The Value Stack is a methodology that bases compensation on the actual, calculable benefits that DERs create. DERs subject to the Value Stack

receive compensation for the energy they inject into the utility system according to a set of values that are calculated based on the utility costs they offset, including: Energy Value, based on the energy commodity purchase requirements offset by each kilowatt-hour (kWh) injected; Capacity Value, based on the Installed Capacity (ICAP) purchase requirements offset by injections; Environmental Value, based on the Renewable Energy Credit (REC) compliance costs offset by each kWh injected; Demand Reduction Value (DRV), based on the distribution costs offset by injections, averaged across the utility's service territory; and, Locational System Relief Value (LSRV), available only in locations that the utility has identified as having needs that can be addressed by DERs, and based on the higher, specific distribution costs offset by injections in that area.

The VDER Transition Order also established a number of transitional mechanisms to moderate the changeover from NEM to the Value Stack for various customer classes and project types, including Phase One NEM, which is a limited continuation of NEM-style compensation, and the Market Transition Credit (MTC), which is an adder to the Value Stack for mass market customers participating in CDG projects and is designed to make Value Stack compensation approach the previous level of compensation under NEM. The VDER Transition Order established three Tranches for CDG projects at each utility, Tranches 0/1, 2, and 3, with limited capacities and an MTC for each Tranche.³ In the Orange and Rockland Utilities, Inc. (O&R) and Central Hudson Gas and

³ Projects which qualified before a specified date while Tranche 0/1 was open were placed in Tranche 0 and receive Phase One NEM; projects that qualified after that date were placed in Tranche 1 and receive the Value Stack with the Tranche 1 MTC. A project is deemed qualified on the date that the developer makes a payment for 25% of its interconnection costs or executes a Standard Interconnection Contract if no such payment was required.

Electric Corporation (Central Hudson) service territories, the Commission also established Tranche 4 once Tranches 1-3 were exhausted.⁴ The MTC stepped down to a lower level in each subsequent Tranche from 1 through 4, with different levels at each utility.

On July 26, 2018, Department of Public Service Staff (Staff) filed both a Draft Staff Whitepaper Regarding VDER Compensation for Avoided Distribution Costs and a Whitepaper on Future Community Distributed Generation Compensation (collectively, the July Staff Whitepapers).⁵ The July Staff Whitepapers recommended, among other things, modifications to the compensation methodology used for the DRV, a replacement for the MTC in the O&R and Central Hudson service territories where all approved Tranches had been exhausted, and modifications to the MTC in other service territories.

On December 12, 2018, Staff filed a Whitepaper Regarding Future Value Stack Compensation, Including for Avoided Distribution Costs (Compensation Whitepaper); and on December 14, 2018, Staff filed a Whitepaper Regarding Capacity Value Compensation (Capacity Whitepaper) (collectively with the Compensation Whitepaper, the December Staff Whitepapers).⁶ The Compensation Whitepaper modified the recommendations in the July Staff Whitepapers based on stakeholder comments and further Staff review. Specifically, inter alia, it recommended the

⁴ Case 15-E-0751, Order Regarding Compensation of Community Distributed Generation Projects (issued January 18, 2018).

⁵ Case 15-E-0751, Draft Staff Whitepaper Regarding VDER Compensation for Avoided Distribution Costs (filed July 26, 2018) and Whitepaper on Future Community Distributed Generation Compensation (filed July 26, 2018).

⁶ Case 15-E-0751, supra, Whitepaper Regarding Future Value Stack Compensation, Including for Avoided Distribution Costs (filed December 12, 2018) and Whitepaper Regarding Capacity Value Compensation (filed December 14, 2018).

replacement of the MTC for new projects in the Niagara Mohawk Power Corporation d/b/a National Grid (National Grid), New York State Electric & Gas Corporation (NYSEG), and Rochester Gas and Electric Corporation (RG&E) service territories with the Community Credit. The Community Credit is, like the MTC, a per kWh adder to the Value Stack for CDG members; unlike the MTC, it is not limited to only mass market customers but instead goes to all CDG members. In addition, while customers receiving the MTC do not receive the DRV, customers who receive the Community Credit also receive the DRV.

The Compensation Whitepaper also recommended that non-mass-market participants in CDG projects in Tranches 1-4 in all utility service territories receive a \$0.01/kWh Community Credit, while the mass market participants in those projects would continue to receive the previously established MTC. The Compensation Whitepaper explained that this could encourage the inclusion of large customers as anchor customers in projects that would otherwise be 100% mass market. This would lower project costs, and therefore benefit participants, because the presence of an anchor customer reduces project financing costs and other expenses; it would also lower total utility compensation of those projects, reducing net revenue impacts, as the Proposed Community Credit is less than the MTC for all projects in Tranches 1-4 at all utilities.

The VDER Compensation Order adopted a number of the recommendations in the December Staff Whitepapers while rejecting or modifying others. While the Commission replaced the MTC with the Community Credit for new projects in the National Grid, NYSEG, and RG&E service territories, as well as for new projects in the Consolidated Edison Company of New York, Inc. (Con Edison) service territory, it did not adopt the recommendation for a \$0.01/kWh Community Credit for non-mass-

market participants in CDG projects in Tranches 1-4.⁷ The VDER Compensation Order explained that the Proposed Community Credit would only reduce utility costs, and therefore ratepayer impacts, if it resulted in CDG Sponsors dedicating a greater percentage of their output to an anchor customers than they otherwise would; where output was already being dedicated to anchor customers, it would actually increase utility costs. The Commission noted that several commenters had argued that this presented a risk to increase costs. The Commission found that the record did not adequately demonstrate that the overall impact of the Proposed Community Credit for non-mass-market participants in CDG projects in Tranches 1-4 would be to reduce, rather than increase, ratepayer costs. Therefore, the Commission rejected the recommendation and directed that non-mass-market subscribers to those projects should continue to receive only the Value Stack compensation, without any MTC or Community Credit.

THE PETITION

The Petitioners request rehearing or reconsideration of the Commission's decision in the VDER Compensation Order to reject the Staff recommendation that non-mass-market participants in CDG projects in Tranches 1-4 in all utility service territories receive a \$0.01/kWh Community Credit. They note that, other than that one narrow issue, they appreciate the decisions made in the VDER Compensation Order and request no other changes.

⁷ New projects receiving the Community Credits established in the VDER Compensation Order for all customers are placed in a Community Credit Tranche, which is separate from the numbered Tranches used for projects receiving the MTC for Mass Market customers.

The Petitioners argue that the Commission should grant rehearing because the VDER Compensation Order made an error of fact in finding that the Proposed Community Credit creates a significant risk of increasing net revenue impacts. The Petitioners state that the Petition contains additional context and analysis showing that authorizing the Proposed Community Credit would not create a significant risk of increasing net revenue impacts but would instead lower net revenue impacts.

The Petitioners explain that, based on anecdotal information from its member companies and other companies comprising the bulk of the New York CDG queues, nearly all, if not all, of Tranche 1-4 projects are being developed and marketed on the assumption that they will be fully subscribed by residential or other mass market customers. The Petitioners argue that, though the Proposed Community Credit is lower than the existing utility MTCs, it will still motivate the addition of large anchor customers due to decreased financing and customer acquisition and management costs. Therefore, the effect of the Proposed Community Credit will be to shift 100% residential projects to 60% residential and thereby reduce net revenue impacts by replacing higher MTC payments with lower Community Credit payments.

The Petitioners also argue, as alternative grounds, that the Commission should grant reconsideration because the lack of a Community Credit results in a barrier to CDG project development and creates an unreasonable divergence between projects in Tranches 1-4 and projects in the Community Credit Tranche. Specifically, the Petition explains, it would result in projects in Tranches 1-4 being heavily weighted toward mass-market customers while projects in the Community Credit Tranche would have reduced development and customer acquisition and management costs because of the ability to incorporate anchor

customers. The Petitioners argue that granting the Petition would lower overall CDG costs across the board and foster a more robust CDG market to the benefit of ratepayers.

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 August 7, 2019 [SAPA No. 15-E-0751SP22]. The time for submission of comments pursuant to the Notice expired on October 7, 2019. The comments received are summarized and addressed below.

COMMENTS

Delaware River Solar filed a letter on July 15, 2019, supporting the Petition. Delaware River Solar explains that it currently owns and operates 7.9 MW of CDG projects in New York and has a pipeline of more than 200 MW of CDG projects across upstate New York. Delaware River Solar states that, as a result of the rejection of the Proposed Community Credit, it is unable to include large anchor customers in those projects and instead would need to fill them entirely with mass market customers. Delaware River Solar states that this requirement has created economic challenges and that the Proposed Community Credit would allow it to include large anchor customers in the projects and improve their financial viability.

Solomon Community Solar d/b/a Solar Farms New York (Solar Farms New York) filed a letter on July 19, 2019, supporting the Petition. Solar Farms New York explains that it owns approximately 40 CDG projects representing 120 MW of capacity in the NYSEG service territory. Solar Farms New York explains that, given current policies, it has focused almost entirely on residential customers in enrolling members for those

projects. Solar Farms New York states that if the Proposed Community Credit were authorized, it would allow the enrollment of anchor customers in those projects, which would enable those projects to be developed, built, and operated more efficiently.

The Solar Energy Industries Association (SEIA) filed comments on July 25, 2019, supporting the Petition. SEIA states that instituting the Proposed Community Credit would not create a significant risk of increasing net revenue impacts and would lower overall CDG costs, thereby increasing CDG proliferation in New York.

The Joint Utilities⁸ filed comments on October 7, 2019, opposing the Petition. The Joint Utilities argue that the Commission's determination that the Proposed Community Credit would create a significant risk of increasing net revenue impacts and that the Commission already weighed and rejected the public policy considerations raised by Petitioners. Specifically, the Joint Utilities state that adopting the Proposed Community Credit will provide additional compensation to existing large customers of CDG projects, increasing the net revenue impact of those projects.

LEGAL AUTHORITY

As described in the VDER Transition Order, the Commission has the authority to direct the treatment of DERs by electric corporations pursuant to, inter alia, Public Service Law (PSL) Sections 5(2), 66(1), 66(2), and 66(3). Pursuant to the PSL, the Commission determines what treatment will result in the provision of safe and adequate service at just and reasonable rates consistent with the public interest.

⁸ The Joint Utilities are Con Edison, Central Hudson, NYSEG, National Grid, O&R, and RG&E.

DISCUSSION AND CONCLUSION

The Commission declines to grant rehearing of the VDER Compensation Order because the Petition fails to demonstrate that the Commission committed an error of law or fact, or that new circumstances warrant a different determination.⁹ The Commission's determination that the Proposed Community Credit would create a significant risk of increasing net revenue impacts was based on the record at the time of the VDER Compensation Order, which included comments from Petitioners. The Petition does not demonstrate, based on those comments or other documents in the record, that the Commission's determination was in error or that circumstances have somehow changed. However, the Petition and supportive comments provide additional, new information on the potential net revenue impacts. The Commission finds that this information warrants further evaluation and reconsideration of matters addressed in the VDER Compensation Order.

As both supporters and critics of the Proposed Community Credit agree, the effect of the Proposed Community Credit on net revenue impacts is based on the current customer distribution of eligible projects and the extent to which customer distribution will change if the Proposed Community Credit is approved. If most or all projects in Tranches 1-4 would be 100% residential without the Proposed Community Credit, but the Proposed Community Credit results in some projects moving to include an anchor customer, resulting in up to 40% of those projects' capacity being allocated to large customers, the overall net revenue impact of the projects would decrease and non-participating ratepayers would benefit. On the other hand, if many projects in Tranches 1-4 would already be less than 100%

⁹ PSL §22; 16 NYCRR §3.7(b).

residential without the Proposed Community Credit and if the approval of the Proposed Community Credit does not result in customer distribution shifting, the overall net revenue impact of the projects would increase and non-participating ratepayers would pay increased costs.

The Petitioners and the Joint Utilities present hypothetical net savings and net costs of the addition of the Proposed Community Credit, based on their respective views of the current scenario. The Petitioners arrive at a very high net savings number of \$4,522,336 in the first year and \$84,927,501 of savings over 25 years by assuming, consistent with an extreme version of the first scenario, that all relevant projects would be 100% residential in the absence of the Proposed Community Credit, while all relevant projects will become 60% residential, with the other 40% assigned to one or more large customers, if the Proposed Community Credit is approved.

The Joint Utilities' appendix shows increased costs assuming an extreme version of the second scenario, where projects already have non-mass-market oftakers and the addition of the Proposed Community Credit would not result in any change in customer distribution. For example, the Joint Utilities suggest that if a project is already only 90% residential, the impact of the Proposed Community Credit will be to increase the net revenue impact resulting from that project by \$5,913.

However, the Commission recognizes that if the hypothetical project cited by the Joint Utilities is in a relatively high-value Tranche, like Tranche 1 at Central Hudson, and moves from 90% residential to 60% residential, the additional costs of the Community Credit, which would total \$23,562 once the project is 60% residential, would be offset by a savings of \$106,257, resulting in net ratepayer benefits of \$82,695. Even in the lowest value Tranche with active projects

(i.e., NYSEG Tranche 3), a project moving from 90% residential to 60% residential, while receiving a \$0.01/kWh Community Credit, would result in net ratepayer benefits of \$12,536 after the entire Community Credit cost of \$23,562 is accounted for. Thus, the Proposed Community Credit would only result in an increased net revenue impact where a project both already had a significant percentage of its production dedicated to non-mass-market offtakers and made no change or only a very small change in that percentage based on the availability of the Proposed Community Credit.

For that reason, the relevant questions in evaluating the Petitioners' request for reconsideration are the extent to which projects under development are currently contemplated as residential, and whether the Proposed Community Credit has the potential to shift the customer distribution of those projects. The Petitioners, which include industry organizations with a number of CDG developers and sponsors as members, state that they believe that all, or nearly all, CDG projects are currently being developed and marketed based on the plan of 100% mass-market subscriptions. Similarly, Delaware River Solar and Solar Farms New York state that, in developing projects and subscribing customers, they are currently focused almost entirely on residential customers. Both the Petitioners and the supportive commenters state that the approval of the Proposed Community Credit would result in at least some projects that would otherwise be 100% residential dedicating up to 40% of their capacity to anchor customers.

The Joint Utilities, notwithstanding their access to real world data about customer distribution for operating CDG projects, do not present any information about customer distribution. As of the end of September 2019, more than 130 CDG projects comprising 119 MW of capacity are in service, with

members of those projects identified to the interconnecting utility and receiving bill credits. While, as discussed above, the Petitioners and supportive commenters offer evidence that many Tranche 1-4 projects currently in service are serving 100% residential customers and that this is likely to remain true for Tranche 1-4 projects in development in the absence of the Proposed Community Credit, the Joint Utilities present no evidence that any current projects, much less a significant percentage of those projects, already have anchor customers. This is especially significant because the Joint Utilities, which have access to data about the subscriber mix of all operating projects, would be the only parties able to provide comprehensive data on that question, while Petitioners and supportive commenters are naturally limited to the more anecdotal evidence they provide based on the experiences of their member companies, in the case of the Petitioners and SEIA, and their own projects, in the case of Solar Farms New York and Delaware River Solar.

Furthermore, the comments of Solar Farms New York and Delaware River Solar in particular rebut the Joint Utilities' claim that the addition of the Proposed Community Credit would only result in cost savings if CDG developers cancel existing contracts, by explaining that the primary effect of the Proposed Community Credit would be to allow projects currently in development to include an anchor customer when they begin operation, rather than to immediately shift the membership of projects already in operation. For these reasons, the Joint Utilities' comments are unpersuasive and fail to rebut the evidence of benefits offered by the Petitioners and supportive commenters.

For the above reasons, the Commission grants reconsideration and directs that a \$0.01/kWh Community Credit be

instituted for non-mass-market participants in Community Distributed Generation projects in Tranches 1-4.¹⁰ While this decision does apply to existing projects, including projects that are already interconnected, it is not retroactive. That is, the Community Credit authorized in this Order will not be provided for generation that CDG members have already received compensation for. Instead, the \$0.01/kWh Community Credit should be provided to eligible customers of each eligible CDG project starting with the first billing cycle for that project for which the entire billing period is after July 31, 2020.¹¹ To effectuate this, each of the Joint Utilities shall file amended tariff leaves to become effective on August 1, 2020, on not less than 10 days' notice. Given the limited application of this change and the substantial public process in this proceeding, the newspaper publication requirements for those tariff changes are waived.

CDG projects are a vital component of achievement of the State's goals for a cleaner, more distributed electric system, as well as to ensure that all customers can participate in and benefit from the development of clean energy resources. The approval of the Proposed Community Credit will support achievement of those goals by driving additional CDG development

¹⁰ Because reconsideration is granted on the basis of the additional information and evidence provided regarding the potential net revenue impact of the \$0.01/kWh Community Credit, it is unnecessary to reach the alternate grounds that the Petitioners offer for rehearing, that the lack of a Community Credit results in a barrier to CDG project development and creates an unreasonable divergence between projects in Tranches 1-4 and projects in the Community Credit Tranche.

¹¹ For these purposes, the first billing cycle should be interpreted as that in which all electricity injected for which compensation is being calculated was generated and injected after July 31, 2020.

in New York State, and reducing the risk that projects currently in development are cancelled, while reducing impacts on non-participating ratepayers.

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, in conformance with the discussion in the body of this Order, tariff leaves implementing the \$0.01/kWh Community Credit for non-mass-market participants in Community Distributed Generation projects in Tranches 1, 2, 3, and 4, as described in this Order, on not less than 10 days' notice to become effective on August 1, 2020.

2. The requirements of Public Service Law §66(12)(b) and 16 NYCRR §720-8.1, related to newspaper publication of the tariff amendments described by Ordering Clause No. 1, are waived.

3. 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 one day prior to the affected deadline.

4. This proceeding is continued.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary